

# Child Welfare: The Adoption Incentive Program and Its Reauthorization

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## Summary

Under the Adoption Incentive program (Section 473A of the Social Security Act), states earn federal incentive payments when they increase adoptions of children who are in need of new permanent families. All 50 states, the District of Columbia, and Puerto Rico have earned a part of the \$424 million in Adoption Incentive funds that have been awarded since the program was established as part of the Adoption and Safe Families Act of 1997 (ASFA, P.L. 105-89). Discretionary funding authorized for this program has been extended twice since it was established, most recently in 2008 (P.L. 110-351).

Although funding authority for the Adoption Incentive program expired on September 30, 2013, the Consolidated Appropriations Act, 2014 (P.L. 113-76) permits states to continue to receive the Adoption Incentive payments and appropriates \$37.9 million for them. In addition, Title II of the Preventing Sex Trafficking and Strengthening Families Act (H.R. 4980), which was introduced on June 26, 2014, would extend current annual discretionary funding authority (\$43 million) for Adoption Incentive payments through FY2016. Beyond this, Title II of H.R. 4980 would add incentive payments for states that make improvements in appropriately moving children from foster care to legal guardianship and would determine awards based on the percentage (or rate) of children leaving foster care to adoption and/or guardianship, instead of the absolute number of children leaving. In similar statements issued on June 26, 2014, by the House Committee on Ways and Means and the Senate Committee on Finance, Representatives Camp and Levin, along with Senators Wyden and Hatch, announced H.R. 4980 as “bipartisan legislation [that] reflects agreements reached between House and Senate negotiators” on legislation previously approved in the House and in the Senate Finance Committee. Specifically, Title II of H.R. 4980 draws on H.R. 3205, passed by the House in October 2013, and provisions included in Title I of S. 1870, approved by the Senate Finance Committee in December 2013.

Congress has long shown interest in improving the chances of adoption for children who cannot return to their parents and who might otherwise spend their childhoods in temporary foster homes before “aging out” of foster care. Since ASFA’s enactment in 1997, the annual number of children leaving foster care for adoption has risen from roughly 30,000 to more than 50,000 and the average length of time it took states to complete the adoption of a child from foster care declined by close to one year (from about four years to less than three). Over the same time period, and in significant measure due to the greater number of children leaving foster care for adoption and at a faster pace, the overall number of children who remain in foster care declined by 29%—from a peak of 567,000 in FY1999 to 400,000 in FY2012. Despite these successes, however, the number of children “waiting for adoption” (102,000 on the last day of FY2012) remains about double the number of children who are adopted during a given year. Adoptions of older children remain far less common than adoptions of younger children, and some 23,000 youth aged out of foster care in FY2012, compared to just 19,000 in FY1999.

Under the current award structure, a state’s adoption incentive payment equals the specified incentive amount for a given category of adoptions multiplied by the number of adoptions in the category that is above the number completed by the state in FY2007. The specified incentive amount is \$4,000 for foster child adoptions, \$8,000 for older child (9 years or more) adoptions, and—provided a state is eligible for an incentive in another award category—\$4,000 for special needs (under age 9) adoptions. Additionally, if sufficient appropriations are available in the fiscal year, a state may also earn incentive payments for improving the rate (or percentage) of foster child adoptions. In the five years (FY2008-FY2012) that this incentive structure has been in place, states received combined incentive payments of nearly \$202 million, including \$95 million for increases in the number of foster child adoptions, \$57 million for increases in older child

adoptions, and \$48 million for increases in special needs (under age 9) adoptions. They also received about \$2 million for increases in the *rate* of foster child adoptions. (This amount was significantly less than the nearly \$12 million states were *eligible* to receive based on improved adoption rates. However, that full amount was not paid because nearly all appropriations provided were needed to make incentive payments for increased numbers of adoptions.)

States are permitted to use Adoption Incentive payments to support a broad range of child welfare services to children and families. Many states report spending incentive funds on adoption-related child welfare purposes, including post-adoption support services, recruitment of adoptive homes, and training or conferences to improve adoption casework. A smaller number of states report using these funds for adoption assistance payments, improved adoption homes studies, child protection casework, foster care maintenance payments, or other child welfare purposes.

In addition to amending and extending Adoption Incentive payments, Title II of H.R. 4980 would extend funding for Family Connection Grants (Section 427 of the Social Security Act) for one year, add new reporting and spending requirements for states with regard to certain federal funds they receive under the adoption assistance component of the Title IV-E program, and make possible continued federal Title IV-E guardianship assistance eligibility for children already receiving that assistance who are subsequently placed with a “successor guardian.” Additionally, the bill would make changes to federal foster care requirements intended to further facilitate placement of siblings together while in foster care.

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## Introduction

The Adoption Incentive program (Section 473A of the Social Security Act) provides federal payments to state child welfare agencies that increase adoptions of children who are in need of new permanent families. Generally, these are children for whom reuniting with their biological parents is not possible and who would otherwise be expected to remain in public foster care until they “age out” (i.e., reach the state age of majority or the age at which state custody of children in foster care is ended).

The first Adoption Incentive payments were made to states in FY1999 based on improvement in the numbers of adoptions completed in FY1998, and the most recent were announced in late FY2013 (August 2013) based on improvements in the numbers of adoptions completed in FY2012. Since the inception of the program, states (including the 50 states, the District of Columbia, and Puerto Rico) have collectively received close to \$424 million in federal incentive payments for increased adoptions.

The Adoption Incentive program was most recently extended through FY2013 by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). However, as part of the Consolidated Appropriations Act, 2014 (P.L. 113-76), Congress extended states’ eligibility to earn adoption incentive payments for an additional year and appropriated \$37.9 million to make those payments. Legislation to reauthorize and extend the Adoption Incentive Payments program through FY2016 has passed the full House (H.R. 3205) and was approved in the Senate Finance Committee (Title I of S. 1870). Title II of H.R. 4980, introduced on June 26, 2014, draws on language in both of those legislative proposals.

In addition to extending funding authority for incentive payments through FY2016, Title II of H.R. 4980 would make changes to the incentive structure established in the 2008 law—including by changing the award categories to focus more on permanency for children 9 years of age or older, establishing incentive payments for states that appropriately move children from foster care to legal guardianship, determining improvements in state performance based on the rate (or percentage) of children leaving foster care to adoption or guardianship (rather than the number), and putting additional focus on achieving permanence through adoption or guardianship for older children.

Apart from reauthorizing the Adoption Incentive program, the Fostering Connections to Success and Increasing Adoptions Act of 2008 made several other changes to federal law, which Title II of H.R. 4980 would amend or otherwise address. Specifically, the bill would

- extend \$15 million in annual mandatory funding for Family Connection Grants for one year (FY2014); that grant program was first established and funded in the 2008 law;
- adjust eligibility criteria for Title IV-E kinship guardianship assistance (which was first established in the 2008 law) to ensure continuous program eligibility for a child who must go to live with a “successor guardian” due to the incapacitation or death of his/her relative guardians;
- seek to further ensure siblings have the opportunity to live together while in foster care, by specifying that a 2008 requirement for state agencies to identify and give notice to grandparents and other relatives of children entering foster care includes identifying and providing notice to any parent of a sibling of a child entering care (provided that parent has custody of the sibling); and

- require additional reporting by states to ensure they spend any savings resulting from the expanded federal support for Title IV-E adoption assistance provided for in the 2008 law, and require that no less than 30% of any identified savings be used by the state to provide post-adoption or post-guardianship services and services to ensure safety and well-being of children who might otherwise enter foster care.

This report begins by describing in greater detail the legislation under consideration in the 113<sup>th</sup> Congress that would reauthorize and extend the Adoption Incentive Payments program and make additional child welfare-related changes described above. (**Appendix A** includes a table comparing current law with several reauthorization proposals, including Title II of H.R. 4980.) It also discusses hearings and other legislative actions taken in this Congress as part of the reauthorization effort. Additionally, the report provides background related to the Adoption Incentive program, including a discussion of the long-standing congressional interest in domestic adoption, the significant increases in adoption from foster care that have occurred since the mid-1990s, and the Adoption Incentive Payments program as it has functioned since the program's 2008 reauthorization.

Throughout this report some unique terms related to adoption, foster child adoptions, or the Adoption Incentive program are used (e.g., “special needs” and “adoption rate”). While each of these terms is explained in the body of the report, for ease of reference they are also included in a “Glossary of Terms” provided in **Appendix B** to this report.

## Legislation to Extend Adoption Incentive Payments

On June 26, 2014, Representative Camp, with Representatives Levin, Reichert, and Doggett, introduced the Preventing Sex Trafficking and Strengthening Families Act (H.R. 4980).<sup>1</sup> The bill's introduction was jointly announced by Representatives Camp and Levin, along with Senators Wyden and Hatch, and was described as “bipartisan legislation [that] reflects agreements reached between the House and Senate negotiators.”<sup>2</sup> Title II of H.R. 4980 draws on provisions

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<sup>1</sup> H.R. 4980 includes three titles but only the provisions of Title II are discussed in the body of this report. Title I of H.R. 4980 includes amendments to the Title IV-E program that would require state child welfare agencies to have procedures to identify and determine services for certain children and youth who are victims of sex trafficking, increase their efforts concerning children who run away from foster care, and to report certain information related to these identified victims of trafficking as well as certain missing children. Title I of H.R. 4980 would also make other changes to the law intended to increase the ability of children in foster care to participate in “normal” age and developmentally appropriate activities, including by establishing and requiring use of a “reasonable and prudent parent standard” for foster caregivers, permitting states to use Chafee Foster Care Independence Program (CFCIP) funds to support foster children's participation in such activities, and by increasing funding for the CFCIP by \$3 million annually (as of FY2020). Title I of H.R. 4980 would also restrict the use of the case plan goal “another planned permanent living arrangement” (to children in care at age 16 or older and for whom additional case review requirements are met), seek to increase opportunities for youth in care at age 14 or older to participate in their own case and permanency planning, and provide certain identity documents to youth leaving foster care at age 18 or older. Title I of the bill would also authorize a National Advisory Committee on Sex Trafficking of Children. These provisions draw on a variety of earlier introduced legislation, including the House-passed H.R. 4058 and provisions approved by the Senate Finance Committee as Title II of S. 1870 (also introduced as S. 1878). Title III of H.R. 4980 includes amendments related to the Child Support Enforcement (CSE) program (Title IV-D of the Social Security Act). Those provisions draw on earlier House-passed legislation (H.R. 1896) and provisions approved by the Senate Finance Committee as Title III of S. 1870 (also introduced as S. 1877).

<sup>2</sup> Similar press releases, both including the quoted statement above, were issued by the Senate Committee on Finance and the House Committee on Ways and Means. See Committee on Ways and Means, “House and Senate Leaders Announce Bipartisan Agreement to Prevent Child Sex Trafficking, Increase Adoptions, and Improve Child Support



included in both the Promoting Adoptions and Legal Guardianships for Children in Foster Care Act (H.R. 3205, introduced by Representative Camp, with Representatives Levin, Reichert, and Doggett), which was passed by the House in October 2013, and Title I of the Supporting At-Risk Children Act (S. 1870), which was approved by the Senate Finance Committee in December 2013. (The Title I provisions of S. 1870 were also introduced in S. 1876, the Strengthening and Finding Families for Children Act, which was introduced by Senator Baucus, with Senators Hatch, Wyden, Rockefeller, Grassley, and Casey.)

H.R. 3205 and S. 1870, in turn, drew on other introduced bills, which sought to extend Adoption Incentive Payments and/or make other amendments to child welfare law. In the 113<sup>th</sup> Congress, these bills included the Guardians for Children Act (H.R. 2979, introduced by Representative Doggett, with Representatives Danny K. Davis, Bass, Lewis, Rangel, McDermott, and Blumenauer); Investing in Permanency for Youth in Foster Care Act (H.R. 3124, introduced by Representative Danny K. Davis); Removing Barriers to Adoption and Supporting Families Act of 2013 (S. 1511, introduced by Senator Rockefeller, with Senator Casey); Supporting Adoptive Families Act (S. 1527, introduced by Senator Klobuchar, with Senators Landrieu and Blunt/H.R. 3423 introduced by Representative Langevin, with Representatives Wittman, Frederica Wilson, Sean Patrick Maloney, Norton, Bass, and Grimm); and the Sibling Connections Act (S. 1786, introduced by Senator Grassley, with Senator Kaine).

## Improving Adoption Incentives and Extending Family Connection Grants

This section describes Title II provisions of the Preventing Sex Trafficking and Strengthening Families Act (H.R. 4980). For a comparison of these Title II provisions to current law and provisions included in H.R. 3205 and S. 1870/S. 1876, see **Appendix A**.

### Extension and Revision of Adoption Incentive Payments

#### Three-Year Extension of Funding Authority

The Adoption Incentive program was authorized to receive up to \$43 million in annual appropriations through the end of FY2013. Despite the expiration of funding authority, Congress chose to provide \$37.9 million in FY2014 appropriations for these payments (P.L. 113-76).

Title II of H.R. 4980 would renew discretionary funding authority for the program, renamed as Adoption and Legal Guardianship Incentive Payments, at the current annual level (\$43 million) through FY2016. The proposed three-year reauthorization time frame would align the funding authorization for the incentive payments program with the funding authorizations provided for two child welfare programs authorized under Title IV-B of the Social Security Act (Stephanie Tubbs Jones Child Welfare Services and Promoting Safe and Stable Families).<sup>3</sup>

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Collections,” Press Release, June 26, 2014 and Committee on Finance, “Senate and House Leaders Announce Bipartisan Agreement to Prevent Child Sex Trafficking, Increase Adoptions, and Improve Child Support Collections,” June 26, 2014.

<sup>3</sup> For more information on these programs, see CRS Report R43458, *Child Welfare: An Overview of Federal Programs and Their Current Funding*, by Emilie Stoltzfus.



## Revised Award Categories

Title II of H.R. 4980 would revise the categories for which states may earn incentive payments, expanding them to include exits from foster care to legal guardianship and placing additional focus on states' abilities to appropriately move children age 9 or older to permanent homes via adoption or guardianship. It would retain an award category for improving foster child adoptions and add a separate award category for foster child guardianships. Awards in these categories would be available with regard to adoptions and guardianships for children of any age. Additionally, H.R. 4980 would split the current "older child adoptions" award category into two groups and add foster child guardianships to both categories. The two new award categories would be for adoptions and foster child guardianships of children ages 9 through 13 years (defined as "pre-adolescent" adoptions and guardianships) and for those aged 14 or older (defined as "older child" adoptions and guardianships). Finally, H.R. 4980 would eliminate the award category tied to adoptions of children less than 9 years of age who are determined by their state to have special needs.<sup>4</sup>

## State Performance to be Determined Based on Rate

Further, H.R. 4980 would base all awards on improvements a state makes in the *rate* (or percentage) of children moving to adoption (or guardianships). An improved rate would mean that the percentage of adoptions (or guardianships) achieved in the fiscal year for which an incentive payment is being determined is greater than the percentage achieved in the baseline year. Under H.R. 4980, a state's baseline year would be either the fiscal year immediately preceding the one for which the award is being determined, or the average rate for the three fiscal years immediately preceding the year for which the award is being determined, *whichever has a lower rate*.<sup>5</sup> (Effectively, this means awards would be based on whichever of these two rates produces the greatest measured improvement.)

Comparing percentages (or rates) to determine improved performance—instead of using the absolute numbers of adoptions achieved as is currently done in this program—removes the effect of overall caseload changes from the measurement. For states with declining numbers of children in foster care but continued strong performance with regard to appropriately placing children for adoption or in legal guardianships, comparing rates (instead of absolute numbers) can ensure access to incentive payments. For states with increasing caseloads, it can ensure that increases in the number of adoptions or guardianships completed by the state are related to improved permanency efforts by the state, not simply the availability of more children for placement.

## Award Amounts by Category

Under current law, a state's total adoption incentive payment is generally equal to the number of increased adoptions multiplied by the incentive payment amount tied to each category—\$4,000

<sup>4</sup> "Special needs" in the context of this program means a state has determined that 1) the child cannot or should not return to his home; 2) assuming this is in the child's best interest, efforts to place the child without providing medical or adoption assistance have been made but have not been successful; and 3) the child has a condition or factor (e.g., age, membership in a sibling group, physical condition, mental or emotional disability) that makes it reasonable to conclude that the child will not be placed without medical and/or adoption assistance. For additional information see "Conditions or Factors Used by States in Determining Special Needs," in CRS Report R42792, *Child Welfare: A Detailed Overview of Program Eligibility and Funding for Foster Care, Adoption Assistance and Kinship Guardianship Assistance under Title IV-E of the Social Security Act*, by Emilie Stoltzfus.

<sup>5</sup> A rate for a fiscal year is defined as the number of children who moved to adoption (or guardianship) during the year divided by the number of children in foster care on the last day of the previous fiscal year.

for foster child adoptions, \$4,000 for special needs (under age 9) adoptions,<sup>6</sup> and \$8,000 for older child adoptions. By contrast, H.R. 4980 provides that a state's incentive payment would equal the number of adoptions and/or guardianships calculated to have been completed because the state improved its rate (or percentage) of those adoptions and/or guardianships, multiplied by the award amount in that category. For each such foster child adoption, the award amount would be \$5,000; for each such foster child guardianship, \$4,000; for each such pre-adolescent (9 through 13 years) adoption or guardianship, \$7,500; and for each older child (14 or older) adoption or guardianship, \$10,000.

### **Counting Foster Child Guardianships**

H.R. 4980 would stipulate that for a foster child guardianship to be counted in the incentive program, the child must leave foster care for placement with a legal guardian. Further, the state must report to the Department of Health and Human Services (HHS) that it has determined for that child that being returned home or placed for adoption are not appropriate permanency options, that the child shows a strong attachment to the prospective legal guardian, that the prospective legal guardian has a strong commitment to providing permanent care for the child, and, if the child is age 14 or older, that he or she has been consulted regarding the legal guardianship arrangement.<sup>7</sup> As an alternative, the state may inform HHS that it used "alternative procedures" to determine that legal guardianship was the appropriate option for a child who exited foster care to live with a legal guardian.

### **Additional Award, Provided Sufficient Appropriations**

Under current law, in any year when appropriations are sufficient, states that improve their highest-ever foster child adoption rate (beginning with the rate achieved in FY2002) are eligible for additional incentive payments. H.R. 4980 would amend this policy to instead provide a "timely adoption award" in any fiscal year when appropriations remain after all incentive payments for improved rates of adoptions and/or guardianships have been made. A state would be eligible to receive this award in any fiscal year that HHS determined that on average, children who left foster care for adoption during that year had been in foster care for less than 24 months (from removal to finalized adoption).

### **Delayed Effective Date and Transition Rule for New Incentive Structure**

As discussed above, H.R. 4980 would significantly alter the incentive structure, including by changing the categories for which awards are provided, changing award amounts, and calculating all awards based on improvements in a state's rate of adoptions or guardianships. However, the bill would provide a transition period before this new incentive structure would be fully implemented. Specifically, the renaming of the program and the changes in the incentive structure would not begin to take effect until FY2015 (October 1, 2014). This means incentive payments expected to be made this fiscal year (i.e., in August or September 2014 for adoptions finalized in

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<sup>6</sup> Under current law, states may only earn payments in this category if they also earn an award in that year for increases in the number of foster child or older child adoptions, or if they improve on their "highest ever" rate of foster child adoptions.

<sup>7</sup> These provisions are similar to eligibility requirements associated with the Title IV-E kinship guardianship assistance program. However, unlike those requirements, they do not require that the legal guardian must be a relative of the child; nor do they require that the child must have been living in foster care and with the prospective relative guardian for at least six months or that the child was eligible for Title IV-E foster care maintenance payments while living with the prospective legal guardian.

FY2013) would be paid under the incentive structure in current law (including award categories, baseline numbers, and award amounts). H.R. 4980 also stipulates that incentive payments made in the second year of the reauthorization (FY2015) would equal one-half of the amount a state earns under the current law structure, plus one-half of what it would earn under the incentive structure included in H.R. 4980. In the third year of the reauthorization (FY2016), the award structure included in H.R. 4980 would be used exclusively to determine the state's incentive payments.<sup>8</sup>

## **Other Changes to Adoption Incentive Payments**

### ***36 Months to Expend Award Funds***

Apart from extension of the program and changes in the incentive structure, H.R. 4980 would amend the law to permit states up to 36 months from the month they receive any incentive funding to use those funds. (Current law allows states up to 24 months from the date payments are made to use the funds.)

### ***No Supplantation***

Under current law, states must spend any incentive payments they receive on the kinds of child and family services that may be supported under the federal child welfare programs included in Title IV-B and Title IV-E of the Social Security Act. Further, current law specifies that any incentive spending must not be counted as the non-federal share of funding required under Title IV-B or Title IV-E programs. H.R. 4980 would keep each of those provisions in place and would additionally stipulate that states must use the incentive funds to supplement, not supplant, any current spending of federal or non-federal dollars for these child welfare activities.

## **State Reinvestment of Any Adoption Assistance Savings**

Title II of H.R. 4980 would also amend provisions of the adoption assistance component of the Title IV-E program under the Social Security Act. Under current law, states are required to document savings in state spending (if any) that result from expanding federal eligibility for Title IV-E adoption assistance. That eligibility expansion was allowed by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) and is primarily the result of removing income eligibility criteria for Title IV-E adoption assistance. The eligibility expansion began to be phased in with FY2010 and will be fully implemented as of FY2018. Soon after enactment of this expanded eligibility provision, the Congressional Budget Office (CBO) projected that it would increase federal Title IV-E spending by \$1.4 billion from FY2009-FY2018, with the bulk of that increase (\$1.3 billion) projected to occur in FY2014-FY2018.<sup>9</sup> Some or all of this increase in federal outlays is likely to represent savings of state monies.

Under H.R. 4980, the requirements related to reinvestment of these funds would be restated and expanded. States would be required, beginning with FY2015, to calculate any savings in state

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<sup>8</sup> Adoption incentive payments are typically made at the end of a fiscal year for adoptions completed in the previous fiscal year. Therefore, payments made in the first year of the reauthorization (FY2014) would be expected to be paid in August or September of 2014 and would be based on adoptions finalized in the state in FY2013. Payments in the second year of the reauthorization (FY2015) would be expected to go out in August or September 2015 for adoptions and/or guardianships finalized in FY2014, and payments in the third year of the reauthorization would be expected to go out in August or September of 2016 for adoptions and/or guardianships completed in FY2015.

<sup>9</sup> CBO Cost Estimate, *H.R. 6893, Fostering Connections to Success and Increasing Adoptions Act of 2008*, as signed by the President October 7, 2008, December 23, 2008.

spending based on the federal adoption assistance provided to children made eligible by the less restrictive federal criteria. States would be required to do this calculation using a methodology specified by HHS, or proposed by the state and approved by HHS. Further, each state would need to annually submit to HHS the methodology it used to calculate savings (whether or not any were identified); the amount of any savings identified; and how the savings are to be spent. HHS would be required to post this state-reported information on its website.

Finally, Title II of H.R. 4980 would require states to spend no less than 30% of any identified savings to provide post-adoption services, post-guardianship services, and services to support and sustain positive permanent outcomes for children who might otherwise need to enter foster care. Further, of that 30%, no less than two-thirds must be spent for post-adoption and post-guardianship services. H.R. 4980 would also amend the law to stipulate that the spending of any such savings would need to supplement, rather than supplant, any federal or non-federal money already being used to support child welfare services available under programs included in Title IV-B or Title IV-E.

## **Successor Guardianship**

Title II of H.R. 4980 would amend the guardianship assistance provisions of the Title IV-E program to provide that if the relative legal guardian of a child who is receiving Title IV-E kinship guardianship assistance dies or is incapacitated, the child continues to be eligible for this assistance so long as he or she is placed with a successor legal guardian. The successor legal guardian must have been named in the Title IV-E kinship guardianship agreement that was earlier entered into between the state child welfare agency and the child's previous relative legal guardian.<sup>10</sup> Under current law, a child receiving Title IV-E kinship guardianship assistance whose legal relative guardian dies or becomes incapacitated cannot be certain that this assistance will continue with a successor guardian. Instead, the child must have eligibility for this Title IV-E assistance redetermined. Among other things, this redetermination requires the child to return to foster care for at least six months (and while living with the prospective successor guardian). The Congressional Budget Office (CBO) estimates this change in Title IV-E eligibility criteria (which would prevent the need for children to re-enter more costly foster care) would reduce federal outlays by \$7 million across 11 years (FY2014-FY2024).<sup>11</sup>

## **Family Connection Grants**

Title II of H.R. 4980 would appropriate \$15 million to continue Family Connection Grants for one year (FY2014).<sup>12</sup> (According to CBO, the cost of this one-year appropriation would be fully offset by other changes included in H.R. 4980.)<sup>13</sup> Family Connection grants are competitively

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<sup>10</sup> This provision incorporates language of the Guardians for Children Act (H.R. 2979), which was introduced by Representative Lloyd Doggett on August 2, 2013, with Representatives D. Davis, Bass, Blumenauer, Lewis, and Rangel.

<sup>11</sup> Congressional Budget Office, *H.R. 4980, the Preventing Sex Trafficking and Strengthening Families Act*, as introduced June 26, 2014.

<sup>12</sup> The competitive grant funding awarded under this program is typically awarded at the end of the fiscal year for which it was provided. Accordingly, this funding is expected to be awarded to grantees in August or September 2014 (and used by them in FY2015). Most of the funding is expected to be used to provide a third year of funding for grantees who were initially awarded three-year grants (subject to available appropriations) in late FY2012. See Congressional Budget Office, *H.R. 4980, the Preventing Sex Trafficking and Strengthening Families Act*, as introduced June 26, 2014, June 26, 2014.

<sup>13</sup> Principally these offsetting changes are made in Title III of H.R. 4980 and concern required use of electronic income

awarded to public or private organizations to carry out kinship navigator programs, intensive family finding efforts, family group decisionmaking policies, and residential family treatment programs. The grants were established and funded (FY2009-FY2013) by the Fostering Connections to Success and Increasing Adoptions Act of 2008.<sup>14</sup>

Beyond extending program funding for one year, H.R. 4980 would expand the list of entities eligible to apply for Family Connection grant funding to include institutions of higher education. It would seek to encourage greater support for foster parents who are willing to care for youth in care who are themselves parents (through kinship navigator programs) and it would remove from the law a provision ensuring the reservation of no less than \$5 million in Family Connection Grant funding, annually, to support kinship navigator programs. (Accordingly, under H.R. 4980 funding for kinship navigator programs would be available under Family Connection Grants on the same basis as for any other authorized service.)

## **Promoting Sibling Connections**

Under the federal foster care program (Title IV-E of the Social Security Act), states are required to “exercise due diligence” to identify grandparents and other adult relatives of children being removed from parental custody and to provide those relatives notice of the child’s removal from his/her parent(s), as well as of the options the grandparent or other adult relative has for participating in the child’s care or placement.<sup>15</sup> Title II of H.R. 4980 would amend this provision to specify that states must identify and provide this notice to a parent of a sibling of a child, provided that parent has legal custody of the sibling. Further, for purposes of the federal foster care program, it would define “sibling” to mean an individual recognized as a sibling under the state’s law, or an individual who would be defined as a sibling except for the legal termination or other disruption of parental rights (such as the death of a parent).

## **Data Collection on Prior Adoptions and Guardianships**

As part of the Title IV-E program, states are required to regularly report and collect data on children in foster care and those leaving foster care for adoption. Title II of H.R. 4980 would require HHS to issue new regulations providing for collection of data specifically concerning children who enter foster care after having been previously adopted or placed in a legal guardianship. (This may include children who were, or were not, previously in foster care.) The legislation notes that the data to be collected under the regulation are to promote increased knowledge on how best to ensure strong, permanent families for children in foster care, must include the number of children who enter foster care after a prior finalized adoption or legal guardianship, and may include information on the length of the prior adoption or guardianship, the age of the child at the time of the prior adoption or guardianship, the age of the child when he or she subsequently entered foster care, the type of agency involvement in making the prior adoptive or guardianship placement, and any other information determined necessary to better

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withholding orders under the Child Support Enforcement program (Title IV-D of the Social Security Act).

<sup>14</sup> For more information on Family Connection Grants, including grantees and their projects, see the information available at the National Resource Center for Permanency and Family Connections <http://www.nrcpfc.org/grantees.html>, which is supported by HHS, Children’s Bureau.

<sup>15</sup> Section 471(a)(29) of the Social Security Act.



understand the factors associated with the child's post-adoption or post-guardianship entry to foster care.<sup>16</sup>

## Earlier Reauthorization Activities in the 113<sup>th</sup> Congress

### Subcommittee on Human Resources Hearing

On February 27, 2013, the Subcommittee on Human Resources of the House Ways and Means Committee held a hearing on "Increasing Adoptions from Foster Care." Subcommittee Chairman Dave Reichert, noting the increase in adoptions and decline in the foster care caseload since the enactment of the Adoption Incentive program and other changes to the law in 1997, said that the hearing was to consider if other changes were needed to encourage adoption from foster care.<sup>17</sup> Four witnesses discussed the importance of adoption as a way for children to find permanent homes, and they gave particular attention to the need for adoptions of older children and those with special needs. Each of the witnesses supported reauthorization of the Adoption Incentive program.

Several witnesses described successful efforts to recruit adoptive families for older or harder to place children as those that start with a focus on the individual children or youth in need of families and engage them in the search for those families.<sup>18</sup> One recruitment model, known as "Wendy's Wonderful Kids," includes small caseloads that allow adoption caseworkers to get to know and work with the children for whom they are seeking permanent homes. A rigorous study of the model's effectiveness found that children served under this recruitment and placement model were one and a half times more likely to leave foster care for permanent homes than those who received traditional adoptive home recruitment services. The model's impact is greatest among older children and those with mental health disorders.<sup>19</sup> The state of Ohio has recently contracted to use the Wendy's Wonderful Kids model (on a nearly statewide basis) to find homes for harder to place children age 9 or older. By moving children from foster care to permanent homes more quickly, Ohio anticipates significant fiscal savings.<sup>20</sup>

Raising awareness of the need for adoptive families is a central goal of the Wait No More campaign, discussed by another hearing witness. This campaign brings together public child welfare agencies, private and public adoption agencies, church leaders and other support partners

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<sup>16</sup> The CBO estimated total costs of \$3 million (across FY2014-FY2024) for data collection and reporting requirements included in H.R. 4980. Title I of H.R. 4980 also includes some data collection and reporting requirements and the cost estimate does not specify whether this total \$3 million cost is associated with provisions in Title I, Title II or both. However, it does show all of these costs fully offset by other changes to the law. See Congressional Budget Office, *H.R. 4980, the Preventing Sex Trafficking and Strengthening Families Act*, as introduced June 26, 2014.

<sup>17</sup> See Opening Statement of Chairman Dave Reichert, Subcommittee on Human Resources of the House Ways and Means Committee, *Hearing on Increasing Adoptions from Foster Care*, February 27, 2013. (Hereinafter *Hearing*, February 27, 2013.)

<sup>18</sup> Testimony of Rita Soronen, President and CEO, Dave Thomas Foundation for Adoption and Testimony of Pat O'Brien, Executive Director and Founder, You Gotta Believe! The Older Child Adoption and Permanency Movement, Inc., *Hearing*, February 27, 2013.

<sup>19</sup> Karin Malm, Sharon Vandivere, with Tiffany Allen, Kerry DeVooght, Raquel. Ellis, Amy McLindon, Jacqueline Smollar, Eric Williams, and Andrew Zinn, *Evaluation Report Summary: The Wendy's Wonderful Kids' Initiative*, Child Trends, Washington, DC: 2011, pp. 9-11, 14-15.

<sup>20</sup> Testimony of Rita Soronen, Subcommittee on Human Resources, *Hearing*, February 27, 2013.

to promote and host adoption events at churches around the country. Interested families may begin the adoption process at the event, where speakers stress that adoption is about meeting the needs of the child (not the needs of adults), discuss common behavioral challenges for adoptees from foster care, and offer strategies to enable successful child and family outcomes.<sup>21</sup>

Witnesses also focused on the need for post-adoption services, including counselors with specific training and knowledge about the needs of adoptive families, to ensure safety and stability of these families.<sup>22</sup> One witness asked that the longer-standing federal focus and financial support for increasing adoptions be coupled with a greater focus on (and financial support for) post-adoption services and suggested that Congress require states to spend their Adoption Incentive funds on post-adoption support.<sup>23</sup> Another asked that Congress ensure that children who were adopted did not lose access to education, mental health-related, or other services that would be available to them if they remained in foster care.<sup>24</sup>

Several witnesses mentioned assignment of the case plan goal “another planned permanent living arrangement” (APPLA) as a potential barrier to finding permanent families for youth in care.<sup>25</sup> Once a youth’s goal is fixed as “APPLA,” one witness noted the child welfare agency stops searching for a permanent family and focuses exclusively on preparing the youth for “independent living.” He asserted that federal policy should always require efforts to find a permanent home for youth in care and noted that those efforts could continue even as the agency worked to help the youth develop independent living skills.<sup>26</sup>

Other issues raised at the hearing included a call for reauthorization of the separate competitive grant program known as Family Connections, which one witness noted supports projects that can help connect youth with permanent families through greater kinship support, intensive family-finding efforts and family group decision-making meetings, and greater use (by states) of Title IV-E training funds to support more competent adoption casework.<sup>27</sup> As part of the hearing question and answer, witnesses also supported expanding the Adoption Incentive program to reward states that help youth gain a safe, permanent family through means other than adoption. In particular, several mentioned the importance of legal guardianship to achieving a permanent family for some older youth.<sup>28</sup>

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<sup>21</sup> Testimony of Kelly Rosati, Vice President, Community Outreach, Focus on the Family, *Hearing*, February 27, 2013.

<sup>22</sup> Ibid. See also Testimony of Nicole Dobbins, Executive Director, Voice for Adoption, *Hearing*, February 27, 2013.

<sup>23</sup> Testimony of Nicole Dobbins. Dobbins also sought more accountability from states on their use of projected savings from the growing federal investment in Title IV-E adoption assistance (authorized by the Fostering Connections to Success and Increasing Adoptions Act, P.L. 110-351). She maintained that states should be required to invest a portion of any savings they experience (due to this increased federal adoption assistance support) in post-adoption support services.

<sup>24</sup> Testimony of Rosati, including response to questions at *Hearing*, February 27, 2013. While states may make certain benefits available only to youth who remain in care, Congress has provided that certain education benefits and other assistance available to youth who “age out” of care (under Title IV-E of the Social Security Act) may also be available to youth who leave foster care for adoption or guardianship on or after their 16<sup>th</sup> birthday. In addition, as part of the Higher Education Act, Congress permits any youth who was in foster care on or after his/her 13<sup>th</sup> birthday to apply for federal financial aid as an “independent” student. For more information, see CRS Report RL34499, *Youth Transitioning from Foster Care: Background and Federal Programs*, by Adrienne L. Fernandes-Alcantara.

<sup>25</sup> Testimony of Nicole Dobbins, Executive Director, Voice for Adoption and Testimony of Pat O’Brien, *Hearing*, February 27, 2013.

<sup>26</sup> Testimony of Pat O’Brien, *Hearing*, February 27, 2013.

<sup>27</sup> Testimony of Nicole Dobbins, *Hearing*, February 27, 2013.

<sup>28</sup> See response of each witness to question raised by Representative Danny Davis, *Hearing*, February 27, 2013.



## Subsequent Activities in the House

On August 7, 2013, the House Ways and Means Committee posted on its website a “discussion draft” bill to re-authorize the Adoption Incentive Payments program. The accompanying announcement sought comments on that draft bill as well as comments on the Guardians for Children Act (H.R. 2979).<sup>29</sup>

After receiving comments and revising the proposal, the Promoting Adoption and Legal Guardianship for Children in Foster Care Act (H.R. 3205) was introduced on September 27, 2013, by Representative Camp, along with Representatives Levin, Reichert, and Doggett. The full House considered and passed this bill, under suspension of the rules, on October 22, 2013. A requested roll call vote tallied 402 for the bill and 0 opposed. As noted earlier, and shown in **Appendix A**, Title II of H.R. 4980 draws significantly from this bill.

## Senate Finance Committee Hearing

On April 23, 2013, the Senate Finance Committee held a hearing to consider reauthorization of the Adoption Incentive program; to extend funding for Family Connection Grants; and, more broadly, to consider the kinds of changes necessary to make further improvements in the provision of foster care.<sup>30</sup> The hearing revolved around the story of Antwone Fisher, who spent his entire childhood in foster care before “aging out” (just before his 18<sup>th</sup> birthday) to live in a homeless shelter.

At the hearing, Mr. Fisher recounted his story, and, among other things, highlighted the need for child welfare agencies to actively work to find a permanent family for each child in foster care, ensure the safety and well-being of children while they are in care, and provide them with meaningful opportunities to prepare for adulthood.<sup>31</sup>

Other witnesses at the hearing stressed many of these same points. One witness focused on the need to engage youth in taking charge of their lives, including through transition planning and a form of individual development accounts known as “Opportunity Passports.”<sup>32</sup> A former child welfare agency director talked about the efforts of his agency to move from a “punitive” system with a single “fault-finding” response to one that was collaborative and family-centered (providing responses commensurate with a family’s needs and concerns).<sup>33</sup> Additionally, one witness asserted the need for child welfare agencies to place a greater value on finding and involving family members in meeting the needs of the children they serve. He suggested the need for states to develop a more systemic approach to identifying family members and advocated

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<sup>29</sup> For more information on this proposal, congressional clients may request a copy of CRS Congressional Distribution (CD) Memorandum, “Proposal to Revise and Extend Adoption Incentive Payments and Related Matters,” August 14, 2013.

<sup>30</sup> Senate Finance Committee, *Hearing on the Antwone Fisher Story as a Case Study for Child Welfare*, April 23, 2013. (Hereinafter *Hearing*, April 23, 2013.)

<sup>31</sup> Testimony of Antwone Fisher, Author, Director and Film Producer; former foster youth, *Hearing*, April 23, 2013.

<sup>32</sup> Testimony of Gary Stangler, Executive Director, Jim Casey Youth Opportunities Initiative, *Hearing*, April 23, 2013.

<sup>33</sup> Testimony of Eric Fenner, Managing Director for Strategic Consulting, Casey Family Programs, *Hearing*, April 23, 2013. Mr. Fenner, a former director of the public children’s services agency for Franklin County, Ohio, also discussed the county’s use of flexible federal funding (made possible under Ohio’s Title IV-E waiver) to invest in community-based services.

more enforcement of, and new reporting on, the existing federal requirements<sup>34</sup> for child welfare agencies to identify and give notice to adult relatives of children entering foster care.<sup>35</sup>

## Subsequent Activities in the Senate

On September 30, 2013, the Senate Finance Committee posted a discussion draft bill to reauthorize Adoption Incentive Payments and make certain other changes to federal child welfare policies.<sup>36</sup> After receiving comments on this draft, a version of that discussion draft bill became Title I of the Chairman's Mark version of the Supporting At-Risk Children Act, which was considered at a December 12, 2013, Finance Committee mark up.<sup>37</sup> The Chairman's Mark was modified to include two child welfare-related amendments (concerning promoting sibling connections and establishing a timely adoption award) before being approved on a voice vote.<sup>38</sup> The bill was reported to the Senate (as S. 1870) on December 19, 2013. (A written report, S.Rept. 113-137, to accompany this legislation, was filed later.) Also on December 19, 2013, the provisions of Title I of S. 1870 (as approved by the Senate Finance Committee) were introduced in a stand-alone bill, known as the Strengthening and Finding Families for Children's Act (S. 1876). That bill was introduced by Senator Baucus, with Senators Hatch, Wyden, Rockefeller, Grassley, and Casey. As discussed earlier and shown in **Appendix A**, Title II of H.R. 4980 draws significantly from Title I of S. 1870/S. 1876.

## Background

The remainder of this report reviews past congressional interest in use of adoption to move children from foster care to permanency, including the creation of the Adoption Incentive Payments program in 1997 legislation (ASFA, P.L. 105-89), before discussing this program as it has operated since its 2008 reauthorization (Fostering Connections, P.L. 110-351).

## Congressional Interest in Adoptions

Foster care is a temporary living arrangement for children for whom remaining in their own homes is not safe or appropriate. Most children who enter foster care are ultimately reunited with their parents. However, when reunification is determined not possible or appropriate, adoption is generally considered the best way to achieve a new permanent family for a child.

Congress has long shown an interest in encouraging adoptions of children who would otherwise remain in foster care until they age out. In 1978, the Adoption Opportunities program (Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act, P.L. 95-266) was enacted to require federal administrative coordination of adoption and foster care programs and to support

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<sup>34</sup> Section 471(a)(20) of the Social Security Act, as added by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351).

<sup>35</sup> Testimony of Kevin Campbell, Founder, Center for Family Finding and Youth Connectedness, *Hearing*, April 23, 2013.

<sup>36</sup> Senate Finance Committee, Chairman's News, "Baucus Unveils Discussion Draft of Bill to Strengthen Adoption Programs," September 30, 2013.

<sup>37</sup> Senate Finance Committee, An Open Executive Session to Consider an Original Bill to Repeal the Sustainable Growth Rate and to Consider Health Care Extenders; and the Supporting At-Risk Children Act, December 12, 2013. (Hereinafter *Mark-up* December 12, 2013.)

<sup>38</sup> The amendment related to promoting sibling connections was brought by Senators Grassley, Rockefeller and Casey; the amendment concerning a timely adoption award was brought by Senator Hatch. See Senate Finance Committee, "Modifications to the Chairman's Mark of the Supporting At-Risk Children Act," *Mark-up*, December 12, 2013.

research and other activities to “facilitate elimination of barriers to adoption and to provide permanent and loving home environments for children who would benefit from adoption, particularly children with special needs.” In 1980, Congress enacted the Adoption Assistance and Child Welfare Act (P.L. 96-272), including the first federal support for ongoing subsidies to eligible adoptees with “special needs” (under a new Title IV-E of the Social Security Act). In this context the “special needs” designation applies to children in need of new permanent families (i.e., they cannot be returned to their parents) and who have conditions or factors that make it harder to find them adoptive homes without offering assistance. States may establish their own factors to determine special needs, but commonly used factors include a child’s age; membership in a sibling group; medical condition; mental, physical or emotional disability; or membership in a minority race/ethnicity.<sup>39</sup>

By 1997, a renewed concern about the failure to move children from foster care to permanent families was an important impetus for the Adoption and Safe Families Act (ASFA, P.L. 105-89). As part of that law, Congress made changes to federal child welfare policy that were intended to ensure that states focused on achieving expeditious permanence for children in foster care, including through adoptions whenever appropriate. Among other changes, the law tightened or added new permanency planning timelines for children in foster care, required states to spend certain federal child welfare funds (under the Promoting Safe and Stable Families Program) for adoption promotion and support services, and authorized financial incentives to states that increase adoptions of children out of foster care under the newly created Adoption Incentive program.<sup>40</sup>

In 2008, as part of the Fostering Connections to Success and Increasing Adoptions Act (P.L. 110-351)—and in addition to extending the Adoption Incentive program—Congress expanded eligibility for federal (Title IV-E) adoption assistance principally by removing income criteria tied to the family from which a child had been removed (usually this is the child’s biological family). The revised eligibility criteria are being phased in and now apply to only some children determined to have special needs. However, as of FY2018 any child determined by a state to have special needs may be eligible for ongoing, federally supported adoption assistance.<sup>41</sup>

## **Adoptions with Public Child Welfare Agency Involvement**

Adoption is a social and legal process by which a child gains a new and permanent family. For each child in foster care who cannot be reunited with his or her parents and for whom adoption is determined to be the child’s route to permanency, the state must identify suitable and willing adoptive parent(s). States may begin the process of recruiting an adoptive family before a child is “legally free” for adoption. However, before the child’s adoption may be finalized a state (or tribal) court must generally terminate any existing parental rights or responsibilities to a child.

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<sup>39</sup> See “Conditions or Factors Used by States in Determining Special Needs,” in CRS Report R42792, *Child Welfare: A Detailed Overview of Program Eligibility and Funding for Foster Care, Adoption Assistance and Kinship Guardianship Assistance under Title IV-E of the Social Security Act*, by Emilie Stoltzfus.

<sup>40</sup> CRS Report RL30759, *Child Welfare: Implementation of the Adoption and Safe Families Act (P.L. 105-89)*, by Karen Spar.

<sup>41</sup> See CRS Report RL34704, *Child Welfare: The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351)*, by Emilie Stoltzfus and “Federal Adoption Assistance Eligibility Criteria” in CRS Report R42792, *Child Welfare: A Detailed Overview of Program Eligibility and Funding for Foster Care, Adoption Assistance and Kinship Guardianship Assistance under Title IV-E of the Social Security Act*, by Emilie Stoltzfus.

Once this process, referred to as “TPR” (for termination of parental rights), has been completed, the child’s adoption by new parents may be finalized by a state or tribal court.<sup>42</sup>

Since the 1997 enactment of ASFA, the annual number of adoptions out of foster care rose significantly and the rate of adoptions has doubled. There are fewer children in foster care who are “waiting for adoption,” and the average time it takes to complete an adoption has declined by roughly one year. At the same time, the number of children waiting for adoption remains more than double the number of those adopted each year and adoptions of older children remain less common than those of younger children.

## Growth in the Number of Adoptions Out of Foster Care

The annual number of adoptions from foster care climbed from less than 30,000 in the mid-1990s, to a peak of some 57,000 in FY2009. Since then (through FY2012) the number has remained at, or above, roughly 50,000. The rise in the number of adoptions played a significant role in the decline in the overall number of children in foster care, which peaked in FY1999 at 567,000 children and had declined by 30%, to 397,000 children, as of the last day of FY2012.

The fact that the number of foster child adoptions has remained relatively high, despite the decline in the overall number of children in foster care, is notable.<sup>43</sup> Viewed as a rate—that is the number of children adopted during a given fiscal year for every 100 children who were in foster care on the last day of the preceding fiscal year—public child welfare agency adoptions more than doubled since the late 1990s (from a rate of roughly 6 adoptions per 100 children in foster care to 13 per 100). (See **Table C-1** in **Appendix C** for annual data on number and rate of adoptions.)

## Decline in Children in Foster Care Waiting for Adoption

For roughly one-quarter (24%) of the children in foster care on a given day, adoption has been identified as their case plan goal—that is, their exit strategy to permanency.<sup>44</sup> Some children with a permanency goal of adoption, and certain other children in foster care, are “legally free” for adoption—meaning the rights of both parents have been terminated. These children—those with a case plan goal of adoption and/or for whom all parental rights have been terminated are generally referred to as children who are “waiting for adoption.”<sup>45</sup>

<sup>42</sup> Adoptions are generally a matter of state law and most termination of parental rights (TPR) proceedings and adoption finalizations occur in state courts (although they may also occur in tribal courts). While TPR is required for nearly all adoptions, a few states (and certain tribes) recognize “tribal customary adoptions,” which do not require TPR.

<sup>43</sup> For information by state on the decline in the number of children in foster care and the number waiting for adoption see **Table E-1** and **Table E-2** in **Appendix E**. The state data shown compare caseload and waiting children just before most recent reauthorization (FY2007) to most current national data available (FY2012). Across that time period, the number of children in foster care declined by close to 19% (from 488,000 to 397,000) and the number of those children in foster care who were counted as “waiting for adoption” declined by 24% (from 134,000 to 102,000). While the amount and kind of change in the foster child and “waiting” population varied greatly by state, only seven states saw an increase in their foster care caseload from the last day of FY2007 to the last day of FY2012 and just six saw an increase in the number of children waiting for adoption.

<sup>44</sup> HHS, ACF, ACYF, Children’s Bureau, *The AFCARS Report, No. 20* (November 2013). The most common case plan goal for children in foster care is to reunite with their parents. Smaller numbers of children in care have a case plan goal of living with another relative or living with a legal (relative or non-relative) guardian. Aside from these goals (and adoption), each of which plan for a child’s exit from care to a permanent family, children in foster care have a goal of “emancipation” (aging out) and others have their case plan goal reported as “long-term foster care.”

<sup>45</sup> For a more complete definition of “waiting children” see Glossary of Terms in **Appendix B**.

For most of FY1998-FY2012, the number of children waiting for adoption was between 130,000 and 135,000. However, in recent years this number has declined, and it stood at 102,000 as of the last day of FY2012. Additionally, the share of waiting children who leave foster care for adoption has increased. Specifically, the number of children adopted from foster care in FY1999 was 37% of all children waiting for adoption on the last day of FY1998; the comparable percentage for children adopted in FY2012 was 49%. (See **Table C-2** in **Appendix C** for annual data on the number of waiting children and the share adopted in the following year.)

Even though the number of waiting children has declined, that number represents a slightly larger share of the overall foster care caseload in FY2012 (26%) than was the case in FY1998 (22%). This relatively modest increase in share of children in foster care waiting for adoption—coinciding with greater success in moving waiting children to adoption—might reflect changes in state practice regarding who may be assigned a case goal of adoption. Alternatively, or in addition, it might be the result of state efforts to reduce unnecessary entries to foster care—which in turn could mean a higher percentage of those entering will need to find a new permanent family via adoption.

### **Reduced Time to Adoption**

Adoption is a multi-step legal and social process that takes time to accomplish. Children who enter foster care do not typically move directly to adoption. With limited exceptions federal policy requires that a state must make “reasonable efforts” to reunite a child with his or her family.<sup>46</sup> When reunification is determined not possible, however, the state must take certain steps to free a child for adoption. Specifically, as amended by ASFA, federal law requires a state to petition a state court for termination of parental rights (TPR) to the child if a state court finds either that the child is an abandoned infant (as defined in state law) or that reasonable efforts to reunite the child and his/her parents are not required (because the parent has committed one of certain heinous crimes against the child or his/her sibling). Additionally, once a child has been in foster care for 15 out of the last 22 months, the state must petition the court for TPR, unless it can document for the court that doing so would not be in the child’s best interest, that services necessary for reunification and agreed to in the child’s case plan have not been provided, or that the child is living with a relative.<sup>47</sup> The state court must then determine—based on state laws defining when parental rights may be severed—whether to grant TPR.<sup>48</sup> At the same time, for any child who cannot be reunited and whose case plan goal is adoption, the state agency must work to find an appropriate and willing adoptive family. Once this step is complete, and a child is successfully placed with the family, a state court must again act, this time to finalize the adoption and, as part of this process, to formally provide the adoptive parents with all legal parental rights and responsibilities for the child.

Since FY2000, the amount of time a child spends in foster care before leaving via a finalized adoption has declined by roughly one year. Most of this reduction in time is a result of the shorter time frame needed to reach TPR. However, there has also been some decline in the amount of time it takes to finalize a child’s adoption after TPR is completed. On average, adoptions of children out of foster care that were finalized in FY2000 took just under four years to complete (45.9 months). By contrast, children who reached a finalized adoption in FY2012 did so, on

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<sup>46</sup> See “Prevent Entry or Reunite Children with Their Parents” in CRS Report R42794, *Child Welfare: State Plan Requirements under the Title IV-E Foster Care, Adoption Assistance, and Kinship Guardianship Assistance Program*, by Emilie Stoltzfus.

<sup>47</sup> Ibid. See “Ensure Timely Placement in a New Permanent Family When Appropriate.”

<sup>48</sup> TPR must be determined for each parent individually. For more information see Child Welfare Information Gateway, *State Statutes Series, Grounds for Involuntary Termination of Parental Rights* (2010).



average, in less than three years (33.1 months). (For annual data on average and median time from removal to finalized adoption, see **Table C-3** in **Appendix C**.)

## Adoption Incentive Payments

Promoting the use of adoptions to ensure children who would otherwise remain in foster care have a permanent family has been a driving purpose of the Adoption Incentive program since its creation. The program has also sought to provide special incentives to states for adoptions of children who are considered harder to place in adoptive homes, including children with special needs and older children.<sup>49</sup> Established by ASFA in 1997 (at Section 473A of the Social Security Act), the Adoption Incentive program has been amended and extended twice: first, by the Adoption Promotion Act of 2003 (P.L. 108-145), and, more recently, by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351).

Each reauthorization of the Adoption Incentive program has made some changes to the incentive structure used to determine awards, including the categories for which awards may be earned, the “baselines” used to determine improvement, and/or the amount of the individual incentive awards. The current incentive structure is described below. (**Appendix D** includes a table that shows development of the incentive structure across program reauthorizations.)

### How Do States Earn Incentive Payments?

Under current law, states earn Adoption Incentive funds in four ways.<sup>50</sup> Specifically, states may earn incentive payments for an increase in the

- number of children adopted out of foster care overall;
- number of children adopted at age 9 or older;
- number of children adopted with special needs and who are under the age of 9; or
- rate at which children were adopted from foster care.

Whether a specific state has increased the *number* of adoptions is determined by comparing the number of adoptions that the state finalized during the fiscal year to the number of such adoptions it finalized in FY2007 (the “baseline” year). A state is determined to have increased its *rate* of adoption if the percentage of children adopted from foster care (as a share of the number of all children in foster care in the prior year) is greater than it was in FY2002, or in any succeeding fiscal year prior to the year for which the award is being determined.

### Amount of Incentive Payments

An eligible state earns \$4,000 for each foster child adopted above its baseline number of foster child adoptions and \$8,000 for each older child (age 9 or above) adoption above its older child

<sup>49</sup> The Adoption Incentive program seeks to influence state child welfare agency behavior. Congress has separately provided a tax credit to individuals who adopt children, including children with special needs. This “incentive” to adopt is not a part of the discussion in this report. However, for more information see, CRS Report RL33633, *Tax Benefits for Families: Adoption*, by Christine Scott.

<sup>50</sup> This incentive structure applied for adoptions finalized in FY2008-FY2012; incentive payments for those adoptions were generally awarded at the end of each of FY2009-FY2013. Under the Consolidated Appropriations Act, 2014 (P.L. 113-76) (and as proposed in H.R. 4980) this incentive structure also applies for adoptions finalized in FY2013. Payments for FY2013 adoptions are expected to be initially awarded in September 2014 (i.e., end of FY2014).

adoption baseline.<sup>51</sup> If a state earns an award in either of those categories—or if it improved its adoption rate—it also earned \$4,000 for each adoption of a special needs child (under age 9) that was above its baseline number of such adoptions. Finally, for an improvement in its rate of adoption, a state is eligible for additional incentive funds of \$1,000 multiplied by the increased number of adoptions achieved by the state that are attributed to its improved adoption rate.<sup>52</sup> However, increases due to improved adoption rates may only be paid if sufficient program funding is available after all awards for increases in the number of adoptions have been made.

## Eligibility for Adoption Incentive Payments

Any state (includes the 50 states, District of Columbia, and Puerto Rico) operating a Title IV-E program may be eligible to earn Adoption Incentive payments provided awards are authorized for that year.<sup>53</sup> The program law (Section 473A of the Social Security Act) provides states may only earn awards for adoptions finalized in any of FY2008-FY2012 and it authorizes funds for that purpose through FY2013. However, the Consolidated Appropriations Act, 2014 (P.L. 113-76) provides that states may continue to be eligible to earn Adoption Incentive Payments for adoptions completed in FY2013 and it provides FY2014 funds (\$37.9 million) to make those incentive payments.

Further, to be eligible for Adoption Incentive payments, the state must provide—via the Adoption and Foster Care Analysis Reporting System (AFCARS)—the necessary data to calculate the incentive amounts. The state must also assure that it provides health insurance coverage to any adoptive child for whom the state determined the child has special needs—including those eligible for ongoing Title IV-E adoption assistance and those with special needs who are not eligible for this assistance.<sup>54</sup> In addition, no state may receive an award for an increase in the number of special needs adoptions of children under the age of 9, unless that state, in that same year, also shows an increase in of the number of foster child or older child adoptions (compared to what the state achieved in FY2007), or an increase in the state’s rate of foster child adoption (compared to the rate it achieved in FY2002, or any higher rate achieved in a prior subsequent year).

## Awards and Appropriations

The first Adoption Incentive awards were paid in FY1999 for adoptions finalized in FY1998 and the most recent were initially paid in FY2013 for adoptions finalized in FY2012. During the life of the program, all 50 states, the District of Columbia and Puerto Rico have earned Adoption Incentive payments in one or more years and more than \$423 million has been awarded to all states through FY2012. Discretionary funding was authorized for the program through FY2013 at the annual level of \$43 million. Actual appropriation levels have varied but in recent years have

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<sup>51</sup> These awards are separately calculated. One child’s adoption (if child is age 9 or older) may be counted for purposes of determining awards in both categories. However, a state that increases its foster child adoptions does not necessarily increase its older child adoptions (or vice versa). To earn awards in both categories, the state must show increases in both categories.

<sup>52</sup> An award for an improved rate is calculated by multiplying the state’s baseline adoption rate (i.e., highest rate achieved in FY2002 or any subsequent year preceding year for which award is being determined) by the number of children in the state’s foster care caseload on the last day of the fiscal year preceding the year for which the award is being determined. This result is then subtracted from the number of foster child adoptions in the state in the year for which the award is being determined. The difference represents the number of adoptions that are attributed to the increased adoption rate and this number (rounded to nearest whole number) is multiplied by \$1,000 to determine the award amount. For an example of this award calculation see HHS, ACF, Information Memorandum, “Adoption Incentive Payments,” September 1, 2009 (ACYF-CB-IM-09-03), p. 6.

<sup>53</sup> Section 473A(b)(1) of the Social Security Act. Tribes may not participate. See HHS, ACF, ACYF-CB-IM-09-03.

<sup>54</sup> Section 473A(b)(3) and (4) of the Social Security Act.



been less than \$40 million. For FY2013, Congress provided \$37.2 million (after sequestration) and for FY2014 it provided \$37.9 million.

**Table 1** summarizes the appropriations provided and awards made by fiscal year for which the funds were initially appropriated and the fiscal year for which the incentive funds were earned.<sup>55</sup> For numerous years, not all of the funding shown as the award amount for a given year was actually paid to states at a single time or in a single fiscal year. In years when funds are not sufficient to pay all incentive payment amounts earned (based on numbers of adoptions), HHS prorates the award amounts for the initial payment (as provided for by statute) and subsequently it awards remaining earned incentives (for improved numbers of adoptions) when additional appropriations are provided.<sup>56</sup> For example, when HHS made the initial award for adoptions completed in FY2012, it had just \$32.5 million available, or about 74% of the full amount states earned during the year for increasing the *numbers* of children adopted. Accordingly, each state that earned such an award received 74% of that total amount in September 2013. Subsequently, Congress provided additional program appropriations (as part of P.L. 113-76) and HHS awarded the remaining amount (26%, or about \$11.4 million) to states.

**Table 1. Adoption Incentive Payments  
Summary of Appropriations and Award History**

Appropriation Law	Appropriations	FY Adoptions Finalized	Award Amount
P.L. 105-277 (1999)	\$19,994,999	FY1998 (35 states)	\$42,510,000
P.L. 106-113 (2000)	\$41,784,342	FY1999 (43 states and DC)	\$51,488,000
P.L. 106-554 (2001)	\$42,994,000	FY2000 (35 states and DC)	\$33,238,000
P.L. 107-116 (2002)	\$43,000,000	FY2001 (23 states and PR)	\$17,578,000
P.L. 108-7 (2003)	\$42,721,000 <sup>a</sup>	FY2002 (25 states and PR)	\$14,926,845
P.L. 108-199 (2004)	\$7,456,000	FY2003 (31 states and PR)	\$17,896,000
P.L. 108-447 (2005)	\$9,346,000 <sup>b</sup>	FY2004 (24 states, DC, and PR)	\$14,488,000
P.L. 109-149 (2006)	\$17,808,000 <sup>a</sup>	FY2005 (21 states)	\$11,568,000
P.L. 110-5 (2007)	\$5,000,000	FY2006 (19 states)	\$7,354,000
P.L. 110-161 (2008)	\$4,323,000	FY2007 (21 states)	\$11,086,000
P.L. 111-8 (2009)	\$36,500,000	FY2008 (38 states and DC)	\$35,357,280 <sup>c</sup>
P.L. 111-117 (2010)	\$39,500,000	FY2009 (38 states and PR)	\$45,752,000 <sup>c</sup>
P.L. 112-10 (2011)	\$39,421,000	FY2010 (32 states)	\$40,144,000 <sup>c</sup>
P.L. 112-74 (2012)	\$39,346,000	FY2011 (30 states)	\$36,472,000 <sup>c</sup>
P.L. 113-6 (2013)	\$37,230,000 <sup>d</sup>	FY2012 (25 states)	\$43,896,000 <sup>c</sup>
P.L. 112-76 (2014)	\$37,943,000	Awards for FY2013 adoptions expected to be made in late FY2014	
<b>TOTAL appropriated</b>	<b>\$464,367,341</b>	<b>TOTAL expected to be awarded</b>	<b>\$423,754,125</b>

<sup>55</sup> Section 473A(h)(2) provides that funds appropriated for the Adoption Incentive program may be used in any fiscal year through the last fiscal year for which funding for the program is authorized. However, the use of funds across years has usually been limited to fewer years due to language in the annual appropriations bill.

<sup>56</sup> Section 473A(d)(3) of the Social Security Act. See also HHS, ACF, ACYF-CB-IM-09-03, September 1, 2009.

Appropriation Law	Appropriations	FY Adoptions Finalized	Award Amount
<i>(includes some funds transferred or lapsed and therefore unavailable for award)<sup>a, b</sup></i>		<i>(includes only amounts earned that were also awarded)<sup>c</sup></i>	

**Source:** Table prepared by the Congressional Research Service (CRS) based on appropriations laws, HHS, ACF budget justifications, and CRS communication with ACF budget and program analysts.

- Some of the funds provided in this appropriation cycle lapsed and were returned to the federal treasury. Funds may lapse when the congressional authority for their use expires before they are needed to award incentive payments to states.
- The appropriation in P.L. 108-447 was initially \$31.8 million. However, as part of FY2006 appropriations (P.L. 109-149), Congress rescinded \$22.5 million of that funding. In addition, HHS/ACF exercised its discretion to move 1% of the appropriated funds (\$318,000) to the Refugee and Entrant Assistance program. This additionally reduced the total FY2005 funds available for Adoption Incentive payments to \$9.0 million, although the amount shown in the table reflects funding after the rescission and prior to the transfer.
- The award amounts shown include payments tied to improved adoption rates *only* if those payments were actually paid to states. Beginning with adoptions finalized in FY2008-FY2012, states were eligible for increases in their incentive payment if they improved their rate of adoptions. However, Section 473A(d)(3) of the Social Security Act provides that these awards may only be paid if funds remain available after any awards for increases in the *number* of adoptions are made. Funding was available to provide 48% (\$1.7 million) of total increases (\$3.5 million) calculated for improved FY2008 adoption rates. No funds were available to provide awards for any part of the increases for which states with improved adoption rates were eligible in FY2009 (\$3.5 million), FY2010 (\$2.3 million), FY2011 (\$0.9 million) or FY2012 (\$1.3 million).
- Funding was subject to sequestration. The amount shown here reflects final operating level for FY2013.

## Awards by Category for Adoptions Finalized in FY2008-FY2012

Under the incentive structure used to make awards for adoptions finalized in FY2008-FY2012, states were eligible to receive \$212 million and received a total of \$202 million in Adoption Incentive payments.<sup>57</sup> Forty-five states were paid Adoption Incentive payments in one or more award category for adoptions finalized in any of FY2008-FY2012.<sup>58</sup> Among the seven states that were not paid an incentive for adoptions finalized in those years, five (Massachusetts, New Jersey, Ohio, and Vermont) actually increased their *rate* of adoption in one or more of those award years and therefore were eligible for an adoption incentive payment, but did not receive an award due to the program funding level. Additionally, one state (New York) increased the number of special needs (under age 9) adoptions in some of those years. However, because it did not earn an incentive in any of the other categories (foster child, older child, or adoption rate), it was not eligible for incentive funds for those increases. The remaining two states (District of Columbia and Iowa) did not increase the number of adoptions achieved or improve their rates of adoption in any of the five years.

**Table 2** shows the total amounts paid to states under the current incentive structure by award year and incentive category.

<sup>57</sup> The difference in what states were eligible to receive and what they are expected to receive is because incentive payments for improvements in rate of adoption may only be paid when the program funding exceeds what is needed to pay awards tied to increases in the number of adoptions. Therefore, although states were eligible for additional incentive payments of \$11.5 million—for improving their adoption rates in award years FY2008-FY2012—they were paid only a fraction of that total (15% or \$1.7 million) and no more of that total is to be paid.

<sup>58</sup> For purposes of this discussion “states” are defined to include the 50 states, the District of Columbia and Puerto Rico, which makes a total of 52 states.

**Table 2. Adoption Incentive Payments for Adoptions Completed in FY2008–FY2012**

Dollars in millions; summed parts may not equal totals due to rounding.

Incentive Category	FY2008	FY2009	FY2010	FY2011	FY2012	Total
Foster Child	\$16.1	\$23.4	\$18.9	\$16.0	\$20.3	\$94.7
Older Child (9 years or older)	\$8.7	\$12.0	\$12.5	\$11.8	\$11.8	\$56.7
Special Needs (under 9 years)	\$8.9	\$10.3	\$8.8	\$8.7	\$11.8	\$48.5
Adoption Rate	\$3.5	\$3.5	\$2.3	\$0.9	\$1.3	\$11.5
<b>TOTAL payments for which states were eligible<sup>a</sup></b>	<b>\$37.1</b>	<b>\$49.3</b>	<b>\$42.4</b>	<b>\$37.4</b>	<b>\$45.2</b>	<b>\$211.5</b>
<b>TOTAL incentive payments awarded<sup>b</sup></b>	<b>\$35.4</b>	<b>\$45.8</b>	<b>\$40.1</b>	<b>\$36.5</b>	<b>\$43.9</b>	<b>\$201.6</b>

**Source:** Table prepared by the Congressional Research Service (CRS) based on data provided by HHS, Children's Bureau.

- a. Beginning with FY2008, states were eligible for additional incentive sums based on improvements to their adoption rate *if sufficient appropriations are available to pay these awards after awards are made for increases in the numbers of adoptions*. FY2008 was the only year for which some funds were available for increases due to states' improved adoption rates. Eligible states were paid \$1.7 million or about 48% of the \$3.5 million in incentive amounts tied to improved adoption rates achieved that year. There were no funds available for incentive payments tied to adoption rate improvements in FY2009 (\$3.5 million), FY2010 (\$2.3 million), FY2011 (\$898,000) and FY2012 (\$1.3 million).
- b. Adoption Incentive awards are typically made at the end of the fiscal year for adoptions finalized in the previous fiscal year and after any unpaid awards tied to increases in the *number* of adoptions finalized in an earlier year.

States did not necessarily receive all of these incentive payments in a single fiscal year. Further, there were insufficient program funds available to make incentive payments for improved adoption rates in most years. Therefore, the total amount of incentive payments that states were eligible to receive for adoptions finalized in FY2008-FY2012 is about \$10 million more than the total amount they were expected to receive.<sup>59</sup>

### Foster Child Adoptions

States earned incentive payments of \$94.7 million (45% of the total incentive funds they were eligible to receive) for increasing their number of foster child adoptions finalized in FY2008-FY2012. That award category is the broadest—applying to children adopted from foster care generally. States may earn \$4,000 for every adoption of a foster child in the given award year that is above the number of foster child adoptions the state completed in FY2007 (the baseline year). Fifteen states finalized more foster child adoptions in each of FY2008-FY2012 than they did in FY2007, and they earned foster child adoption incentive payments in each of these five years. A little more than half of the states (27) earned incentive payments for increases in foster child adoptions in at least one or more (but not all five) of those years, and 10 states did not improve on their FY2007 record in any of these five years.

### Older Child Adoptions

Twenty-seven percent (\$56.7 million) of the total incentive dollars states were eligible to receive for adoptions finalized in FY2008-FY2012 were tied to increases in the number of children who were adopted at 9 years of age or older. Adoptions of older children are less common than are adoptions of those who are younger. However, states may earn the largest award amount for

<sup>59</sup> For incentive awards earned by each state for each of FY2008-FY2012 by category, see HHS, ACF,ACYF, Children's Bureau, "Adoption Awards by Category," FY2008-FY2012," September 2013. (Available at <https://www.acf.hhs.gov/programs/cb/resource/adoption-incentives-awards-by-category>.)

increases in this incentive category. Specifically, states may earn \$8,000 for every adoption of an “older child” in the given award year that is above the number of older child adoptions the state completed in FY2007 (the baseline year). Twelve states earned incentive payments for increasing their numbers of older child adoptions in each of FY2008-FY2012 and, a little more than half of the states (27) did so in at least one (but not all five) of those years. Thirteen states did not increase their number of older child adoptions (above their FY2007 level in the state) in any of those five years.

### **Special Needs (Under Age 9) Adoptions**

Twenty-three percent (\$49.5 million) of the incentive payments states were eligible to receive for adoptions finalized in FY2008-FY2012 were linked to increases in the number of adoptions of children who were determined to have special needs and who were under the age of nine. States are only eligible to earn incentive payments in this category if they have earned an award in at least one other incentive category during the same fiscal year (i.e., they increased older child or foster child adoptions or they improved their rate of adoption). For eligible states, the award amount is \$4,000 for every adoption of a special needs child under 9 years of age that is above the state’s baseline number of such adoptions (i.e., above the number of such adoptions it achieved in FY2007).

For adoptions finalized in FY2008-FY2012, 10 states increased their number of special needs (under age 9) adoptions above their baseline, but were not eligible in one or more years when this occurred because they did not earn an incentive payment in any other Adoption Incentive category in that same year. Overall, 10 states increased the number of special needs (under age 9) adoptions finalized in each of those five years (compared to FY2007); more than half of the states (30) did so in at least one (but not all) of the five years (FY2008-FY2012); and 12 states did not increase the number of these adoptions (above their FY2007 level) in any of those five years.

### **Adoption Rate**

Finally, the total incentive amount a state is eligible to receive in a year is increased if the state improves its rate of adoption. However, this increased incentive payment is only authorized to be paid to states if sufficient appropriations remain available *after* awards are made for increases in the number of adoptions. For adoptions finalized in FY2008-FY2012, states were collectively eligible for \$11.5 million in incentive payments for improved adoption rates (5% of incentive payments states were eligible for across all four award categories). However, there were sufficient appropriations to award just \$1.7 million (15%) of the total amount.

A state’s adoption rate is equal to the total number of foster child adoptions it completed in the fiscal year for every 100 children that were in its foster care caseload on the last day of the preceding fiscal year. An award for an increased rate of adoption can ensure that an incentive may be earned by a state that continues to appropriately move children from foster care to adoption even as the total number of children in foster care declines. In those states, the total number of children for whom adoption is the desired or appropriate permanency outcome is also likely to decline.

To be counted as having an improved adoption rate, a state was required to exceed the highest rate of adoptions it had achieved in any year (beginning with FY2002) that came before the year for which the awards were being calculated. A state that improved its adoption rate was eligible for \$1,000 award for each adoption calculated to have been achieved due to the higher rate of adoptions.

The large majority of states (44) improved on their initial adoption rate baseline in one or more years from FY2008-FY2012. In FY2008, on average, states finalized roughly 11 adoptions for every 100 children who were in foster care; the comparable number for FY2012 was 13 adoptions for every 100 children in foster care.

## **Spending Award Money**

States may spend Adoption Incentive funds anytime within a 24-month period, beginning with the month in which the funds are awarded to a state.<sup>60</sup> The statute permits states to spend these incentive dollars on any service authorized to be provided to children and families under Title IV-B or Title IV-E of the Social Security Act. Those parts of the law authorize a broad range of child welfare-related activities, including activities to prevent child abuse or neglect and/or provide services to enable a child to remain in his/her own home; investigation of alleged child abuse or neglect and placement of children in foster care if necessary; provision of services to reunite a child in foster care with his/her parents and for services to maintain the reunification; finding a new permanent home for children who may not be reunited with their parents, including through adoption or guardianship; provision of post-permanency services; and services to assist a youth in foster care to make a successful transition to adulthood. A state may not count its spending of Adoption Incentive funds toward meeting any of the “matching” requirements included in the programs authorized in Title IV-E and Title IV-B of the Social Security Act. (Programs under those parts of the law generally require states to supply between 20% and 50% of the total program funding out of their non-federal, state or local, dollars.)<sup>61</sup>

Many states report spending incentive funds on adoption-related purposes, including post-adoption support services (e.g., support for adoptive parent mentors or adoptive family support groups, respite care, casework and supports for adoptive families of children at risk of re-entering foster care); recruitment of adoptive homes (e.g., support for online adoption exchange or photo-listing, development of promotional materials, child-specific recruitment efforts); and training or conferences to improve adoption casework. Other adoption-related services or supports funded with Adoption Incentive awards (in a smaller number of states) included provision of monthly adoption assistance payments, purchase of new equipment or provision of other resources to improve processing and archiving of adoption records, support for new or improved adoption home studies, and attention to inter-jurisdictional adoption placement. Some states used Adoption Incentive funds for foster care-related activities (e.g., training or recruitment of foster parents—alone or in combination with adoptive parents and foster and/or adoptive parent supports). Others referenced support for permanency efforts more generally (i.e., incorporating guardianship or reunification). At least one state reported using these incentive funds for foster care maintenance payments. Finally, a few states described use of Adoption Incentive funds for services to families and children remaining in the home (e.g., alternative response and direct child protection services).<sup>62</sup>

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<sup>60</sup> Section 473A(e) of the Social Security Act. The 2008 reauthorization amended the law to ensure that states have a full two years from the date they receive the incentive funds to spend them. Prior law permitted states to spend funds through the end of the fiscal year following the fiscal year in which awards were made. However, because the bulk of award funding is provided in the waning days of the fiscal year, this typically permitted states only a little more than 12 months to spend the award funds.

<sup>61</sup> Section 473A(f) of the Social Security Act.

<sup>62</sup> Based on CRS review of state Annual Progress and Services Reports (APSRs) submitted by states, generally, in mid-to late-2012, as part of requesting certain federal FY2013 child welfare funding.

# Appendix A. Comparison of Current Law and Selected Reauthorization Proposals

**Table A-I. Selected Provisions to Reauthorize Adoption Incentive Payments and Make Other Child Welfare Changes**

H.R. 3205 passed the House in October 2013; Title I provisions of S. 1870 approved by the Senate Finance Committee in December 2013;  
Title II of H.R. 4980 introduced on June 26, 2014

Issue	Current Law	Promoting Adoption and Legal Guardianship (H.R. 3205)	Strengthening and Finding Families for Children (Title I of S. 1870/S. 1876)	Adoption and Child Support Enhancement Act (Title II of H.R. 4980)
<b>Adoption Incentive Payments</b> (Section 473A of the Social Security Act)				
<i>Reauthorization of funding authority</i>	Annual funding of \$43 million authorized on a discretionary basis through FY2013.	Would extend this same level of discretionary funding authority for each FY2014-FY2016.	Same as H.R. 3205.	Same as H.R. 3205.
<i>Award categories (payment amounts)</i>	State earns an incentive payment for each adoption above its “baseline” number of <ul style="list-style-type: none"> <li>foster child adoptions—all ages (\$4,000)</li> <li>older child adoptions—age 9 or older (\$8,000)</li> <li>special needs, under age 9 adoptions (\$4,000) (earned only if the state earns an incentive in another category)</li> </ul>	State would earn an incentive payment for each adoption or guardianship calculated to have occurred because the state’s rate of adoptions or guardianships, was above its “baseline” rate of <ul style="list-style-type: none"> <li>foster child adoptions—all ages (\$2,000)</li> <li>foster child guardianships—all ages (\$1,000)</li> <li>pre-adolescent adoptions—ages 9 through 13 (\$4,000)</li> <li>older child adoptions—age 14 or older (\$8,000)</li> </ul>	State would earn an incentive payment for each adoption or guardianship calculated to have occurred because the state’s rate of adoptions or guardianships, was above its “baseline” rate of <ul style="list-style-type: none"> <li>foster child adoptions—all ages (\$4,000)</li> <li>foster child guardianship—all ages (\$4,500)</li> <li>older child adoptions or guardianships—age 14 or older (\$8,000)</li> <li>special needs—under age 9 adoptions (\$4,500)</li> </ul>	State would earn an incentive payment for each adoption or guardianship calculated to have occurred because the state’s rate of adoptions or guardianships, was above its “baseline” rate of <ul style="list-style-type: none"> <li>foster child adoptions—all ages (\$5,000)</li> <li>foster child guardianship—all ages (\$4,000)</li> <li>pre-adolescent adoptions or guardianships—ages 9 through 13 (\$7,500)</li> <li>older child adoptions or guardianships—age 14 or older (\$10,000)</li> </ul>



Issue	Current Law	Promoting Adoption and Legal Guardianship (H.R. 3205)	Strengthening and Finding Families for Children (Title I of S. 1870/S. 1876)	Adoption and Child Support Enhancement Act (Title II of H.R. 4980)
<i>Baseline</i>	Number of adoptions the state completed in a given category during FY2007.	The lower of (1) rate of adoptions or guardianships the state achieved in a given category in FY2007 or (2) the rate it achieved in that category in the fiscal year immediately preceding the fiscal year for which the award is being determined,	Average rate of adoptions and/or guardianships the state achieved in a given category for the three fiscal years immediately preceding the fiscal year for which the award is being determined.	The lower of (1) the rate of adoptions and/or guardianships the state achieved in a given category in the fiscal year immediately preceding the fiscal year for which the award is being made or (2) the average rate of adoptions and/or guardianships the state achieved in a given category for the three fiscal years immediately preceding the fiscal year for which the award is being determined.
<i>Additional Incentive Payment</i>	If appropriated funds are available <i>after</i> all awards for increased numbers of adoptions have been paid, HHS must award incentive payments to states (50 states, DC or PR) that improve their rate of foster child adoptions (above highest rate state achieved beginning with FY2002)	Would strike this provision.	Would replace current law provisions with following: If appropriated funds remain, HHS must provide a timely adoption award to each state (50 states and DC) in which more than 50% of adoptions completed in the fiscal year were finalized within 12 months of the date the child was legally free for adoption. The award amount would be equal among each “timely adoption award state.”	Would replace current law provisions with following: If appropriated funds remain, HHS must provide a timely adoption award to each state (50 states, DC and PR) in which the average time from removal to adoption (among children who left foster care for adoption) is less than 24 months. The award amount would be equal among each “timely adoption award state”.
<i>Definition of foster child guardianship</i>	No definition of foster child guardianship. “Legal guardianship” is defined to mean “a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decisionmaking.” A “legal guardian” is the caretaker in this relationship.	Foster child guardianship would be defined as a child’s exit from foster care to legal guardianship if the state reports to HHS that it has determined all of the following: (1) The child was removed from his/her home because a judge found it “contrary to the welfare” of the child or via a voluntary agreement; (2) Neither returning the child to that home nor adoption is the appropriate permanency plan for the child; (3) The child demonstrates a strong attachment to the prospective legal guardian and the prospective legal guardian has strong commitment to caring	Same as H.R. 3205, except that in the first scenario, the state would not need to report to HHS that it had explicitly ruled out adoption as a permanency option for the child.	Same as H.R. 3205.



Issue	Current Law	Promoting Adoption and Legal Guardianship (H.R. 3205)	Strengthening and Finding Families for Children (Title I of S. 1870/S. 1876)	Adoption and Child Support Enhancement Act (Title II of H.R. 4980)
		<p>permanently for the child; and (4) If child is age 14 or older he/she has been consulted.</p> <p>OR</p> <p>Any exit of a child from foster care to legal guardianship where the state provides to HHS the alternative procedures it used to determine that guardianship was the appropriate permanency option for the child.</p>		
<i>Use of Award Payments</i>	<p>States may spend awards on a broad range of child welfare purposes.</p> <p>States have 24 months to spend the award payments.</p>	<p>Same as current law.</p> <p>States would be permitted up to 36 months to spend the awards.</p>	<p>If a state receives an award of at least \$100,000 it must spend no less than 25% of it on post-reunification services.</p> <p>Same as current law.</p>	<p>Same as current law.</p> <p>Same as H.R. 3205.</p>
<i>Effective Dates for Adoption Incentive Payment Amendments, including the Transition Rule</i>	Not applicable.	<p>Reauthorization of funding authority and state eligibility to earn incentive payments along with the ability of state to spend incentive funds for up to 36 months after they receive the funds would be effective as if enacted on October 1, 2013.</p> <p>The renaming of the program and changes to the incentive structure would be effective October 1, 2014. However, incentive payments made in FY2014 would be based on the incentive structure now in the law; incentive payments made in FY2015 would be based one-half on structure now in law and one-half on incentive structure in this bill. All incentive payments made in FY2016 would be based on the incentive structure in the bill.</p>	Same as H.R. 3205	<p>Same as H.R. 3205</p> <p>Same as H.R. 3205.</p>

Issue	Current Law	Promoting Adoption and Legal Guardianship (H.R. 3205)	Strengthening and Finding Families for Children (Title I of S. 1870/S. 1876)	Adoption and Child Support Enhancement Act (Title II of H.R. 4980)
		The requirement that states spend any incentive payments to supplement not supplant other child welfare spending would be effective as if enacted on October, 1 2013.		The requirement that state spend any incentive payments to supplement not supplant other child welfare spending would be effective on the date of enactment.
<b>Family Connection Grants</b> (Section 427 of the Social Security Act)				
<i>Funding for Family Connection Grants</i> <sup>a</sup>	The Fostering Connections to Success and Increasing Adoptions Act appropriated \$15 million for Family Connection grants for each of FY2009-FY2013.	Would appropriate \$15 million for these grants for each of FY2014-FY2016.	Same as H.R. 3205.	Would appropriate \$15 million to continue these grants for one year (FY2014).
<i>Eligible Entities</i>	HHS may award grants to state, local, or tribal child welfare agencies or to private nonprofit organizations that have experience working with foster children or children in kinship care arrangements.	Same as current law.	Would additionally permit HHS to award these grants to colleges or universities (specifically, “institutions of higher education” as defined in Section 101 of the Higher Education Act).	Same as Title I of S. 1870/ S. 1876.
<i>Expanded purpose for kinship navigator program</i>	Kinship navigator programs are intended to assist kin caregivers in finding and accessing services to meet their own needs and the needs of the children for whom they care. Among other requirements, these programs must promote partnerships between public and private agencies to increase knowledge among these groups on needs of kin caregiver families and to promote better services for those families.	Same as current law.	Would provide that the efforts to promote public-private partnerships to improve awareness of, and services for, kinship care families, must also extend to individuals who are willing to be foster parents for youth in foster care who are themselves parents.	Same as Title I of S. 1870/ S. 1876.
<i>Reservation of Funds for Kinship Navigator Programs</i>	HHS must annually reserve \$5 million of funding for Family Connection grants to support kinship navigator programs.	Same as current law.	Would no longer require this specific reservation (meaning this funding would be available to kinship navigator programs on same basis as funding for any other service authorized under the grant.	Same as Title I of S. 1870/ S. 1876.

Issue	Current Law	Promoting Adoption and Legal Guardianship (H.R. 3205)	Strengthening and Finding Families for Children (Title I of S. 1870/S. 1876)	Adoption and Child Support Enhancement Act (Title II of H.R. 4980)
<i>Effective Date for Family Connections</i>		Would make these provisions effective as if enacted on October 1, 2013.	Same as H.R. 3205.	Same as H.R. 3205.
<b>Title IV-E Foster Care—Notice of Child’s Removal from Home</b> (Section 471(a)(29) of the Social Security Act)				
<i>Notice of child’s removal from home</i>	Within 30 days of removing a child from the custody of his or her parents, a state must make diligent efforts to identify and provide notice of this removal to all adult grandparents and other adult relatives of the child and must explain options those adults have of caring for the child.	Same as current law.	Would add to the list of adults that must be identified and given this notice, any parent(s) of a sibling of the child who is being removed, provided that parent has legal custody of the child’s sibling.	Same as Title I of S. 1870/ S. 1876.
<i>Definition of sibling</i>	No definition.	Same as current law.	Would define sibling to mean an individual who (1) is considered a child’s sibling under state law; or (2) would have been considered a sibling under state law but for termination of parental rights or other disruption of those rights (e.g., death of parent).	Same as Title I of S. 1870/ S. 1876.
<i>Rule of Construction</i>	Not applicable	Not applicable.	Would assert that this requirement must not be understood as subordinating the rights of foster or adoptive parents of a child to the rights of the parents of a sibling of that child.	Same as Title I of S. 1870/ S. 1876.
<i>Effective Date for Title IV-E Plan Requirement</i>	Not applicable.	Not applicable.	Would make this provision effective on the date of enactment, except that a state may have limited additional time to meet the requirement if HHS determines that state legislation is needed (other than appropriations) to meet the requirement.	Same as Title I of S. 1870/ S. 1876.
<b>Title IV-E Guardianship Assistance Program—Successor Guardians</b> (Section 473(d) of the Social Security Act)				
<i>Continued Eligibility</i>	To be eligible for federal (Title IV-E) kinship guardianship assistance a child must, among other requirements, have entered foster care after having been removed from a home with very low-	Would permit a child who has already been determined to be eligible for Title IV-E kinship guardianship assistance to remain eligible (without re-entering foster care or otherwise re-determining eligibility) in the	Same as H.R. 3205.	Same as H.R. 3205.

Issue	Current Law	Promoting Adoption and Legal Guardianship (H.R. 3205)	Strengthening and Finding Families for Children (Title I of S. 1870/S. 1876)	Adoption and Child Support Enhancement Act (Title II of H.R. 4980)
	income and, while in foster care, must have lived with the prospective legal guardian at least six months.	event his/her relative legal guardian died or became incapacitated. Specifically would allow the Title IV-E kinship payment to be made on this child's behalf to a successor legal guardian who is named in the child's Title IV-E kinship guardianship assistance agreement.		
<i>Effective Date</i>	Not applicable.	Would make this provision effective on date of its enactment.	Same as H.R. 3205.	Same as H.R. 3205.

Issue	Current Law	Promoting Adoption and Legal Guardianship (H.R. 3205)	Strengthening and Finding Families for Children (Title I of S. 1870/S. 1876)	Adoption and Child Support Enhancement Act (Title II of H.R. 4980)
<b>Title IV-E Adoption Assistance - Reinvestment of Certain Funds</b> (Section 473(a)(8) of the Social Security Act)				
<i>Calculation and Reporting on Any Savings</i>	States are required to document savings in state spending (if any) that result from expanding federal eligibility for Title IV-E adoption assistance (authorized by the Fostering Connection to Success and Increasing Adoptions Act of 2008). <sup>b</sup>	States would be required to calculate the savings (if any) resulting from expanding eligibility for Title IV-E adoption assistance using a methodology specified by HHS, or one proposed by the state and approved by HHS.  Each state would be required to report annually to HHS on (1) the method it used to calculate the savings (regardless of whether any savings were found); (2) the amount of any savings identified, and (3) how any such savings are spent.  HHS would be required to post the annual reports made by each state regarding any such savings and how they are spent on the agency website in a location that is easily accessible to the public.	Generally, same as H.R. 3205.	Same as H.R. 3205.
<i>Spending funds</i>	States may spend any of the savings from expanded federal Title IV-E eligibility on a broad range of child welfare-related services to children and their families, including post-adoption services.	States would be required to spend not less than 20% of any state savings identified to provide post adoption service.          This spending would need to “supplement, and not supplant” current federal or non-federal funds being used to provide those same services.	States would be required to spend not less than 40% of any state savings identified to provide post-adoption or post-guardianship services, and services to support and sustain positive permanent outcomes for children who otherwise might enter foster care.       Same as H.R. 3205.	States would be required to spend not less than 30% of any state savings identified to provide (1) post adoption or post-guardianship services and (2) services to support and sustain positive permanent outcomes for children who otherwise might enter foster care. Not less than two-thirds of this spending must be spent for post-adoption or post-guardianship services.       Same as H.R. 3205.
<i>Effective Date</i>	Not applicable.	Would make this requirement effective as if enacted on October 1, 2013.	Same as H.R. 3205.	Would make this requirement effective on October 1, 2014.

Issue	Current Law	Promoting Adoption and Legal Guardianship (H.R. 3205)	Strengthening and Finding Families for Children (Title I of S. 1870/S. 1876)	Adoption and Child Support Enhancement Act (Title II of H.R. 4980)
<b>Title IV-E Data Collection &amp; Reporting - Adoption Disruption and Dissolutions</b> (Section 479 of the Social Security Act)				
<i>Required data collection and reporting; regulations</i>	<p>HHS was required to establish, by regulation, a data collection system, to provide for comprehensive national information with respect to children in foster care and those who are adopted. (This system is known as the "Adoption and Foster Care Analysis Reporting System (AFCARS).")</p> <p>Separately states report to HHS on spending under the Promoting Safe and Stable Families (PSSF) program.</p> <p>HHS must annually submit to Congress a report on the performance of each state with regard to achieving specific child welfare outcomes. (This report is known as <i>Child Welfare Outcomes</i>.)</p>	Same as current law.	<p>HHS would be required to issue final regulations requiring states to collect and report information on the number of children who enter foster care because their adoptions or foster child guardianships disrupt or are dissolved (whether those children were born in this country or another country).</p> <p>The regulations would also need to provide for state reporting of additional information on the reasons for disruptions and dissolutions and the state's use of pre- and post-adoptive services to lower rates of disruption and dissolution. Finally, the regulations would need to require states to report how they spend funds received under the PSSF program to promote adoption, and separately, to provide pre- and post-adoptive support services.</p> <p>Would require HHS (beginning with data for FY2016) to annually include in this report information collected, as a result of the new data collection and reporting regulations, on the numbers and rates of disruptions and dissolutions of adoptions.</p>	<p>To promote improved knowledge on how best to ensure strong, permanent families for children, HHS is directed to issue final regulations providing for states to collect and report information regarding children who enter foster care after prior finalization of an adoption or legal guardianship. (These children may include those who were previously in foster care as well as others, including those who come to this country through adoption.)</p> <p>The regulation must provide for collection of data on the number of such children and may also require collection of additional information considered necessary to better understand factors associated with the child's post-adoption or post-guardianship entry to foster care.</p>

**Source:** Congressional Research Service. While this table generally captures the differences between these bills (or specified parts of these bills) it is not an exhaustive description of differences between those bills/parts of those bills.

- a. Both H.R. 3205 and S. 1876 sought to offset the cost of a three-year appropriation of mandatory funding to support Family Connection Grants by amending Unemployment Insurance (UI) program (designed to improve recoupment of overpayments). However, a similar change to the UI program was enacted in late December 2013 as part of the Bipartisan Budget Act (P.L. 113-67). Therefore, the Congressional Budget Office (CBO) determined that the UI change proposed in H.R. 3205 and S. 1876 would no longer produce any federal savings. (See CBO, *S. 1870, Supporting At-Risk Children*, January 27, 2014, p. 4.) Title III of H.R. 4980 includes changes to the Child Support Enforcement program (Title IV-D of the Social Security Act)—primarily related to required electronic withholding of certain income orders—that CBO estimates will more than offset the cost of providing one-year of funding for Family Connection Grants. See Congressional Budget Office, *H.R. 4980, the Preventing Sex Trafficking and Strengthening Families Act*, as introduced June 26, 2014, June 26, 2014

- b. P.L. 110-351. This expanding eligibility is primarily the result of removing income eligibility for Title IV-E adoption assistance. It began to be phased in with FY2010 and will be fully implemented as of the first day of FY2018. Around the time of its enactment, the Congressional Budget Office (CBO) projected that this expanding eligibility would increase federal Title IV-E spending by \$1.4 billion from FY2009-FY2018, with the bulk of that increase (\$1.3 billion) projected to occur in FY2014-FY2018. Some or all of this increase in expending federal outlays is expected to represent savings of state monies. See CBO, "H.R. 6893, Fostering Connections to Success and Increasing Adoptions Act of 2008," as signed by the President on October 7, 2008, December 23, 2008.



## Appendix B. Glossary of Terms

**ADOPTION RATE**—The number of children in foster care who are adopted during a fiscal year for every 100 children who were in foster care on the last day of the previous fiscal year.

**ADOPTION RATE BASELINE**—Highest ever adoption rate achieved by the state for any fiscal year that is before the fiscal year for which the Adoption Incentive rate award is being determined, beginning with FY2002.

**ANOTHER PLANNED PERMANENT LIVING ARRANGEMENT (APPLA)**—Each child in foster care must have a permanency goal—that is a plan for leaving foster care to a permanent home. A hearing to determine (or re-determine) that permanency goal must be held no later than 12 months after a child enters foster care, and every 12 months thereafter while the child remains in foster care. If at this hearing it is determined that the child’s plan for permanency may not be any of reuniting with his/her parents, placement for adoption, placement with a legal guardian, or going to live with a fit and willing relative, then a child’s plan for exiting care may be “another planned permanent living arrangement.”

**BASELINE** (as used in the Adoption Incentive program)—The standard against which state performance is measured to determine whether, in a given year, the state has increased its number of adoptions or improved its adoption rate. A baseline is specific to the state, and is based on a state’s past performance. (The four specific baselines used in the current Adoption Incentive program are defined individually in this glossary.)

**FOSTER CHILD ADOPTION**—The finalized adoption of a child who, at the time of adoptive placement, was in public foster care under the placement and care responsibility of the state child welfare agency.

**FOSTER CHILD ADOPTION BASELINE**—The number of foster child adoptions in the state in FY2007 as reported by the state via the Adoption and Foster Care Analysis Reporting System (AFCARS).

**GUARDIANSHIP**—A judicially created legal relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making.

**OLDER CHILD ADOPTION**—The finalized adoption of a child who is nine years of age or older and who, at the time of the adoptive placement was in public foster care *or* was the subject of a Title IV-E adoption assistance agreement between the state child welfare agency and the child’s adoptive parents.

**OLDER CHILD ADOPTION BASELINE**—The number of older child adoptions in the state in FY2007 as reported by the state via AFCARS.

**SPECIAL NEEDS ADOPTION**—The adoption of a child whom the state has determined (1) cannot be returned to his or her parents and (2) is unlikely to be adopted without assistance because of a particular factor or condition (e.g., child’s age; membership in a sibling group; minority race/ethnicity; medical or physical condition; or emotional, mental or behavioral disability). Additionally, unless this is not in the best interest of the child, the state must have made reasonable efforts to place the child for adoption without providing assistance. (A state is required to enter into a Title IV-E adoption assistance agreement with the adoptive parents of any child it finds to have special needs.)

**SPECIAL NEEDS (UNDER AGE 9) ADOPTION**—The finalized adoption of a child who is eight years of age or younger and who at the time of the adoptive placement was the subject of a Title IV-E adoption assistance agreement between the state child welfare agency and the child’s adoptive parents.

**SPECIAL NEEDS (UNDER AGE 9) ADOPTION BASELINE**—The number of special needs (under age 9) adoptions in the state in FY2007 as reported by the state via AFCARS.

**TERMINATION OF PARENTAL RIGHTS (TPR)**—The legal severing (in a state court /court of competent jurisdiction) of the parent-child relationship. (Typically this severs the rights and responsibilities of a biological parent to his/her child. In the case of a previously adopted child however, it is the severing of the rights and responsibilities of the adoptive parent.)

**WAITING FOR ADOPTION** (as counted by HHS, Children’s Bureau)—A child who is in foster care and who has a case plan goal of adoption and/or to whom all parental rights have been terminated. Except that any youth age 16 or older and to whom all parental rights have been terminated is excluded *if* that youth has a case plan goal of “emancipation.”

## Appendix C. Trends in Adoptions with Public Child Welfare Agency Involvement

**Table C-1** shows, by fiscal year, the number of adoptions in which the public child welfare agency was involved, the number of children in foster care (under the responsibility of the public child welfare agency) on the last day of the fiscal year, and the rate of adoptions. All children who leave public foster care for adoption are adopted with public child welfare agency involvement and they represent the very large number of children shown in the adoption column. A small number of children who do not enter foster care may also be adopted with public child welfare agency involvement and that number is also included in the number shown in the adoptions column.

**Table C-1. Adoptions with Public Child Welfare Agency Involvement, FY1995-FY2012**

Adoption Rate = Number of public child welfare agency adoptions in the given fiscal year for every 100 children in foster care on the last day of the preceding fiscal year.

<b>Fiscal Year</b>	<b>Children in Public Foster Care on the last day of the fiscal year</b>	<b>Public Agency-Involved Adoptions during the fiscal year</b>	<b>Adoption Rate</b>
1995	483,000	25,700	5.5
1996	507,000	27,800	5.7
1997	537,000	31,000	6.1
1998	559,000	38,000	7.1
1999	567,000	46,900	8.4
2000	552,000	51,100	9.0
2001	545,000	50,600	9.2
2002	523,000	51,400	9.4
2003	510,000	49,600	9.5
2004	508,000	51,000	10.0
2005	511,000	51,600	10.2
2006	505,000	50,600	9.9
2007	488,000	52,700	10.4
2008	464,000	55,200	11.3
2009	420,000	57,200	12.3
2010	405,000	53,500	12.7
2011	398,000	50,900	12.6
2012	400,000	52,000	13.1

**Source:** Table prepared by the Congressional Research Service (CRS). Children in foster care based on data available on HHS, Children's Bureau website for FY2003-FY2012, as posted July 2013 and for earlier years Table 11-4, "Additional Tables and Figures," Chapter 11, U.S. House Ways and Means Committee, 2012, *Green Book* and HHS, Children's Bureau, "Adoptions of Children with Public Child Welfare Agency Involvement by State" posted in June 2013 (for FY2002) and as reported by states by July 2013 (for FY2003-FY2012).

**Notes:** Because HHS continuously updates and "cleans" these data, some numbers shown here differ from earlier published versions of this report. Data are displayed rounded to nearest 1,000 for total caseload and nearest 100 for adoptions. However, whenever more exact numbers were available they were used to compute the rate shown.

**Table C-2. Number of Children Waiting for Adoption and Percentage of Waiting Children Adopted, FY1998-FY2011**

<b>Fiscal Year</b>	<b>Children Waiting for Adoption</b> <i>on last day of the fiscal year</i>	<b>Percentage of Waiting Children Adopted</b> <i>Children adopted in given fiscal year as percentage of waiting children on last day of previous fiscal year</i>
1998	125,000	<i>not available<sup>a</sup></i>
1999	130,000	37%
2000	131,000	39%
2001	130,100	39%
2002	133,900	40%
2003	130,500	37%
2004	130,300	39%
2005	131,000	40%
2006	135,300	39%
2007	133,700	39%
2008	125,700	41%
2009	114,700	45%
2010	109,500	47%
2011	106,300	46%
2012	101,700	49%

**Source:** Table prepared by the Congressional Research Service (CRS). Number of waiting children for FY2003-FY2013 is based on data reported by states via AFCARS as of July 2013 (as posted on the HHS Children's Bureau website). Data for earlier years are as provided to CRS by the Children's Bureau.

**Notes:** Because HHS continuously updates and "cleans" these data, some numbers shown here differ from earlier published versions of this report.

Number of children waiting for adoption is displayed rounded to nearest 100. However, whenever a more exact number was available, it was used to calculate the percentage. There is no definition of "waiting children" in statute or regulation. For purposes of analysis, the HHS Children's Bureau counts as "waiting" each child in foster care on the last day of the fiscal year who has a case plan goal of adoption and/or for whom all parental rights have been terminated. However, it *excludes* from this number any youth in care who is age 16 or older for whom all parental rights have been terminated if that youth's case plan goal is "emancipation."

a. Could not be calculated because there is no estimate of the number of waiting children in FY1997.

**Table C-3. Average and Median Length of Time to Finalized Adoption, In Months, FY2000-FY2012**

Fiscal Year	Months from Removal to Termination of Parental Rights (TPR) <i>(Among children later adopted)</i>		Months from Termination of Parental Rights (TPR) to Adoption		TOTAL TIME TO FINALIZE ADOPTION <i>Months from removal to adoption</i>	
	Average	Median	Average	Median	Average	Median
2000	32.3	26.0	15.9	12.0	45.9	39.3
2001	29.7	23.5	16.0	11.8	44.0	37.5
2002	27.8	21.5	16.1	12.0	42.9	35.9
2003	26.1	20.1	16.2	12.0	41.8	34.9
2004	24.4	19.3	15.8	11.3	40.3	33.5
2005	23.4	18.8	15.0	10.7	38.3	32.0
2006	22.3	18.4	14.6	10.5	36.9	31.1
2007	21.6	17.9	14.1	10.3	35.7	30.3
2008	21.0	17.7	14.3	10.5	35.2	30.2
2009	20.8	17.8	14.1	10.3	34.8	30.3
2010	20.6	17.7	13.8	10.0	34.6	30.0
2011	20.1	17.4	13.7	9.8	34.0	29.2
2012	20.2	17.2	12.9	9.2	33.1	28.0

**Source:** Table prepared by the Congressional Research Service (CRS) based on state-reported AFCARS data provided to CRS by HHS, Children's Bureau. (FY2000-FY2011 information based on data reported to HHS as of August 2012; FY2012 information based on data reported to HHS as of January 2014.)

**Note:** The median length of time to adoption measures the point at which half of the children adopted in the given fiscal year reached a finalized adoption in fewer months and half in more. By contrast, an average combines the total months to adoptions for all children with a finalized adoption in the given fiscal year and divides that number by the total number of adoptions. The average time to adoption is considerably longer than the median time to adoption because the average is affected by children with significantly longer stays in foster care.

## Appendix D. Adoption Incentive Payments

At each reauthorization of the Adoption Incentive program, Congress has adjusted the incentive structure. New award categories and adjustments to the baselines have placed greater emphasis on adoption of harder to place children, helped to ensure that earning an incentive was possible even as caseloads declined, and protected the value of the incentive payments from erosion by inflation.

**Table D-I. Evolution of Adoption Incentive Payment Structure**

NA = not authorized

<b>Incentive Structure</b>	<b>Original Structure</b> <i>Adoption and Safe Families Act of 1997, P.L. 105-89</i>	<b>Initial Amendment</b> <i>Adoption Promotion Act of 2003, P.L. 108-145</i>	<b>Current Structure</b> <i>Fostering Connections and Increasing Adoptions Act of 2008, P.L. 110-351</i>
<i>Award category</i>	<p><b>Foster Child:</b> Increase in number of children adopted from foster care.</p> <p><b>Special Needs:</b> Increase in number of children adopted who are determined to have “special needs.”</p> <p>NA</p> <p>NA</p>	<p><b>Foster Child:</b> Same as prior law.</p> <p><b>Special Needs Under Age 9:</b> Increase in number of children adopted who are determined to have special needs<sup>b</sup> and are younger than 9 years of age.</p> <p><b>Older Child:</b> Increase in number of older children (age 9 years or above) adopted.</p> <p>NA</p>	<p><b>Foster Child:</b> Same as prior law.</p> <p><b>Special Needs Under Age 9:</b> Same as prior law.</p> <p><b>Older Child:</b> Same as prior law.</p> <p><b>Adoption Rate:</b> Increase in rate of children adopted from foster care (where rate equals the state’s number of foster child adoptions in a fiscal year for every 100 children in foster care in that state on the last day of the previous fiscal year).</p>
<i>Baselines Number</i>	<p><b>Adoptions finalized in FY1998:</b> For each award category, the average number of adoptions achieved by the state in that category for FY1995-FY1997.</p> <p><b>Adoptions finalized in FY1999-FY2002:</b> For each award category, the highest number of adoptions finalized by the state in that category in FY1997 or the highest number in any following fiscal year that precedes the year for which the award is being determined.</p>	<p><b>Adoptions finalized in FY2003-FY2007:</b> For each award category, the highest number of adoptions finalized by the state in that category in FY2002 or the highest number in any following fiscal year that precedes the year for which the award is being determined.</p>	<p><b>Adoptions finalized in FY2008 - FY2012:</b> For each award category, the number of adoptions finalized by the state in that award category during FY2007.</p>

<b>Incentive Structure</b>	<b>Original Structure</b> <i>Adoption and Safe Families Act of 1997, P.L. 105-89</i>	<b>Initial Amendment</b> <i>Adoption Promotion Act of 2003, P.L. 108-145</i>	<b>Current Structure</b> <i>Fostering Connections and Increasing Adoptions Act of 2008, P.L. 110-351</i>
<i>Rate</i>	NA	NA	<b>Adoptions finalized in FY2008 - FY2012:</b> The highest rate of foster child adoptions achieved by the state in FY2002 or the highest rate achieved in any following fiscal year that precedes the year for which the award is being determined.
<i>Incentive Payment Amounts</i>	<p><b>Foster Child:</b> \$4,000 for every foster child adoption above the state's baseline.</p> <p><b>Special Needs:</b> \$2,000 for every special needs adoption above the state's baseline. (Except that a state may only earn an incentive payment in this category if it also earned an incentive payment for increases in foster child adoptions.)</p> <p>NA</p> <p>NA</p>	<p><b>Foster Child:</b> Same as prior law.</p> <p><b>Special Needs under age 9:</b> \$2,000 for every special needs under age nine adoption above the state's baseline. (Except that a state may only earn an incentive payment in this category if it also earned an incentive for increases in either foster child or older child adoptions.)</p> <p><b>Older Child:</b> \$4,000 for every older child adoption above the state's baseline.</p> <p>NA</p>	<p><b>Foster Child:</b> Same as prior law.</p> <p><b>Special Needs under age 9:</b> \$4,000 for every special needs under age nine adoption above the state's baseline. (Except that a state may only earn an incentive payment in this category if it also earned an incentive payment for increases in either foster child or older child adoptions or if it improved its adoption rate.)</p> <p><b>Older Child:</b> \$8,000 for every older child adoption above the state's baseline.</p> <p><b>Adoption Rate:</b> \$1,000 for every adoption finalized that is attributed to the state's higher rate of adoption. (States may only receive incentive payments in this award category if sufficient funds remain available to make the award after all incentive payments have been paid for any increases in foster child, older child, and special needs under age 9 adoptions.)</p>

**Source:** Table prepared by the Congressional Research Service (CRS).



## Appendix E. Children in Foster Care and Waiting for Adoption by State

**Table E-1. Children in Foster Care on the Last Day of the Fiscal Year by State, FY2007-FY2011**

	<b>FY2007</b>	<b>FY2008</b>	<b>FY2009</b>	<b>FY2010</b>	<b>FY2011</b>	<b>FY2012</b>	<b>% Change in Caseload FY2007- FY2012</b>
Alabama	7,262	6,941	6,179	5,350	5,253	4,561	-37.2%
Alaska	2,126	1,954	1,851	1,828	1,871	1,889	-11.1%
Arizona	9,099	9,590	9,423	9,930	10,883	13,461	47.9%
Arkansas	3,616	3,522	3,657	3,756	3,732	3,711	2.6%
California	73,998	67,703	60,583	56,202	54,754	54,288	-26.6%
Colorado	7,777	7,964	7,392	6,980	6,488	6,003	-22.8%
Connecticut	5,763	5,372	4,759	4,456	4,926	4,563	-20.8%
Delaware	1,157	938	814	739	845	799	-30.9%
District of Columbia	2,197	2,217	2,111	2,066	1,797	1,551	-29.4%
Florida	26,788	22,187	19,162	18,743	19,760	19,536	-27.1%
Georgia	12,197	9,984	8,068	6,895	7,591	7,671	-37.1%
Hawaii	1,940	1,621	1,472	1,234	1,122	1,079	-44.4%
Idaho	1,870	1,723	1,446	1,462	1,354	1,234	-34.0%
Illinois	17,864	17,843	17,080	17,730	17,641	16,637	-6.9%
Indiana	11,295	11,903	12,238	12,276	10,779	11,334	0.3%
Iowa	8,005	6,743	6,564	6,533	6,344	6,262	-21.8%
Kansas	6,631	6,306	5,691	5,979	5,852	6,002	-9.5%
Kentucky	7,207	7,182	6,872	6,983	6,659	6,979	-3.2%
Louisiana	5,333	5,065	4,786	4,453	4,531	4,044	-24.2%
Maine	1,971	1,864	1,646	1,546	1,296	1,512	-23.3%
Maryland	8,415	7,613	7,065	6,098	5,460	4,884	-42.0%
Massachusetts	10,497	10,427	9,652	8,958	8,619	8,522	-18.8%
Michigan	20,830	20,171	17,723	16,424	15,091	14,522	-30.3%
Minnesota	6,711	6,028	5,410	5,050	4,995	5,436	-19.0%
Mississippi	3,328	3,292	3,320	3,582	3,597	3,689	10.8%
Missouri	10,282	7,642	7,795	8,687	9,220	9,978	-3.0%
Montana	1,737	1,600	1,639	1,723	1,794	1,937	11.5%
Nebraska	5,875	5,591	5,343	5,358	5,117	5,116	-12.9%

	<b>FY2007</b>	<b>FY2008</b>	<b>FY2009</b>	<b>FY2010</b>	<b>FY2011</b>	<b>FY2012</b>	<b>% Change in Caseload FY2007- FY2012</b>
Nevada	5,070	5,023	4,783	4,807	4,638	4,746	-6.4%
New Hampshire	1,102	1,029	930	839	742	768	-30.3%
New Jersey	9,056	8,510	7,803	6,892	6,440	6,848	-24.4%
New Mexico	2,423	2,221	1,992	1,869	1,859	1,918	-20.8%
New York	30,072	29,493	27,992	26,783	24,962	23,924	-20.4%
North Carolina	10,827	9,841	9,547	8,828	8,601	8,461	-21.9%
North Dakota	1,263	1,223	1,210	1,078	1,066	1,109	-12.2%
Ohio	14,532	13,703	12,232	11,940	12,069	11,877	-18.3%
Oklahoma	11,785	10,595	8,712	7,857	8,280	9,134	-22.5%
Oregon	9,562	8,988	8,650	9,001	8,531	8,686	-9.2%
Pennsylvania	20,999	26,571	16,623	15,179	14,175	14,496	-31.0%
Rhode Island	2,768	2,407	2,112	2,086	1,806	1,707	-38.3%
South Carolina	5,167	5,054	4,978	4,487	3,821	3,113	-39.8%
South Dakota	1,566	1,482	1,484	1,485	1,407	1,399	-10.7%
Tennessee	7,751	7,219	6,723	6,695	7,647	7,978	2.9%
Texas	30,137	28,154	26,686	28,947	30,109	29,613	-1.7%
Utah	2,765	2,714	2,759	2,886	2,701	2,766	0.0%
Vermont	1,309	1,200	1,062	933	1,010	975	-25.5%
Virginia	7,718	7,099	5,968	5,414	4,846	4,579	-40.7%
Washington	11,107	11,167	10,961	10,136	9,533	9,606	-13.5%
West Virginia	4,432	4,412	4,237	4,112	4,475	4,562	2.9%
Wisconsin	7,541	7,403	6,796	6,575	6,547	6,384	-15.3%
Wyoming	1,173	1,113	1,083	1,004	886	963	-17.9%
Puerto Rico	6,330	6,185	5,351	4,476	4,363	4,310	-31.9%
<b>Total</b>	<b>488,226</b>	<b>463,792</b>	<b>420,415</b>	<b>405,330</b>	<b>397,885</b>	<b>397,122</b>	<b>-18.7%</b>

**Source:** Table prepared by the Congressional Research Service (CRS) based on caseload data by state, included in HHS, ACF, ACYF, Children's Bureau, "Foster Care FY2003-FY2012: Entries, Exits and Number of Children in Care on the Last Day of Each Fiscal Year by State" (data are as reported by states via AFCARS as of November 2013).

**Table E-2. Children Waiting for Adoption, FY2007-FY2011, Percentage Change in the Number of Those Children and Share Adopted by State**

State	FY2007	FY2008	FY2009	FY2010	FY2011	FY2012	% Change in Number of "Waiting Children" FY2007-FY2012
Alabama	1,824	1,751	1,475	1,271	1,297	1,155	-37%
Alaska	766	769	714	686	714	786	3%
Arizona	2,516	2,323	2,792	2,673	2,822	2,910	16%
Arkansas	780	872	850	1,604	1,414	1,020	31%
California	20,830	17,847	15,665	14,892	14,630	13,091	-37%
Colorado	1,762	1,897	1,506	1,246	1,098	916	-48%
Connecticut	1,122	1,389	1,355	1,261	1,344	1,385	23%
Delaware	311	304	239	253	244	243	-22%
District of Columbia	560	493	486	419	357	303	-46%
Florida	7,927	7,942	6,364	5,022	4,994	5,127	-35%
Georgia	2,162	2,245	1,802	1,690	1,567	1,645	-24%
Hawaii	733	555	428	351	296	223	-70%
Idaho	593	576	498	389	334	278	-53%
Illinois	5,598	4,608	2,728	2,944	3,272	2,936	-48%
Indiana	3,210	3,090	3,224	3,192	2,886	2,318	-28%
Iowa	1,299	1,158	1,003	1,068	1,088	961	-26%
Kansas	1,812	1,960	1,852	1,825	1,817	1,853	2%
Kentucky	2,153	2,101	2,048	1,951	1,918	1,999	-7%
Louisiana	1,137	1,069	1,093	1,091	1,162	1,088	-4%
Maine	614	619	571	575	511	480	-22%
Maryland	1,660	1,506	1,221	883	772	559	-66%
Massachusetts	2,868	2,846	2,839	2,758	2,675	2,468	-14%
Michigan	6,116	5,674	4,902	5,235	4,237	3,583	-41%
Minnesota	1,674	1,393	1,227	1,073	955	983	-41%
Mississippi	898	996	975	843	880	890	-1%
Missouri	2,853	1,788	2,214	1,992	2,056	2,065	-28%
Montana	597	521	537	495	460	403	-32%
Nebraska	805	881	831	768	831	904	12%
Nevada	1,936	2,200	2,098	2,094	1,970	1,879	-3%
New Hampshire	325	297	272	227	167	182	-44%
New Jersey	3,262	3,009	2,694	2,464	2,294	2,226	-32%
New Mexico	963	907	870	777	786	836	-13%

State	FY2007	FY2008	FY2009	FY2010	FY2011	FY2012	% Change in Number of "Waiting Children" FY2007-FY2012
New York	7,659	7,014	6,890	6,603	6,417	6,056	-21%
North Carolina	3,095	2,903	2,722	2,427	2,234	2,070	-33%
North Dakota	337	288	298	227	230	210	-38%
Ohio	3,762	3,477	3,380	3,013	2,789	2,655	-29%
Oklahoma	4,022	3,766	3,429	2,872	2,956	2,803	-30%
Oregon	2,527	2,206	1,840	1,827	1,832	2,062	-18%
Pennsylvania	3,408	3,525	2,943	2,551	2,045	1,924	-44%
Rhode Island	400	415	333	309	267	223	-44%
South Carolina	1,781	1,823	1,862	1,699	1,415	1,330	-25%
South Dakota	452	423	380	418	376	397	-12%
Tennessee	1,622	1,477	1,326	1,692	2,027	2,514	55%
Texas	13,552	13,414	12,844	13,108	13,481	13,148	-3%
Utah	574	553	565	553	567	566	-1%
Vermont	257	225	231	180	196	226	-12%
Virginia	1,834	1,769	1,617	1,563	1,372	1,517	-17%
Washington	2,837	3,035	3,147	3,089	2,783	2,865	1%
West Virginia	1,278	1,300	1,220	1,241	1,474	1,404	10%
Wisconsin	1,284	1,329	1,256	1,159	1,163	1,129	-12%
Wyoming	154	113	98	106	127	107	-31%
Puerto Rico	1,148	1,071	957	904	746	818	-29%
<b>TOTAL</b>	<b>133,649</b>	<b>125,712</b>	<b>114,711</b>	<b>109,553</b>	<b>106,345</b>	<b>101,719</b>	<b>-24%</b>

**Source:** Table prepared by the Congressional Research Service (CRS) based on state-level data reported via AFCARS as of July 2013, included in HHS, ACF,ACYF, Children's Bureau, "Children in Public Foster Care Waiting to be Adopted."

**Notes:** There is no definition in federal law or regulation for the term "waiting for adoption." For purposes of analysis, and as used in this table, the HHS, Children's Bureau counts as "waiting" any child in foster care with a case plan goal of adoption and/or to whom all parental rights have been terminated. However, it excludes from this count any youth 16 or older to whom all parental rights have been terminated if that youth has a case plan goal of "emancipation."

Although not true for every child, the very large majority of children adopted with public child welfare agency involvement were previously in foster care.

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